

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
C.A. #6-06-CV-00109-HMH

BIDZIRK, LLC, DANIEL G.
SCHMIDT, III, AND JILL
PATTERSON,

Plaintiffs

vs.

PHILIP J. SMITH,
Defendant.

_____/

—

VIDEOTAPED & STENOGRAPHIC

DEPOSITION OF PHILIP J. SMITH

—

PURSUANT TO THE NOTICE OF DEPOSITION AND/OR
AGREEMENTS IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF
PHILIP J. SMITH WAS TAKEN ON FRIDAY, DECEMBER 29TH,
2006, COMMENCING AT 1:06 P.M., AT THE OFFICES OF KEVIN M.
ELWELL, ESQUIRE, 111 EAST NORTH STREET, GREENVILLE, SOUTH
CAROLINA.

KAREN BELANGER
CERTIFIED VERBATIM REPORTER

FOOTHILLS COURT REPORTING

SERVING THE UPSTATE OF SOUTH CAROLINA
(864) 836-2290

APPEARANCES:

FOR THE PLAINTIFF:

KEVIN M. ELWELL, Esquire
111 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

FOR THE DEFENDANT:

PHILIP J. SMITH, APPEARING PRO SE

VIDEOGRAPHER: JACK M. MARKS

THREE POINT OH!
306 RIDGELAND DRIVE
GREENVILLE, SOUTH CAROLINA 29601

ALSO PRESENT: DANIEL G. SCHMIDT
WILLIAM AUSTIN

STIPULATIONS: THE DEPOSITION WAS TAKEN PURSUANT TO THE
FEDERAL RULES OF CIVIL PROCEDURE.

NONWAIVER: EXAMINATION AND READING OF THE DEPOSITION
ARE RESERVED BY THE WITNESS AND BY THE PARTIES.

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PLAINTIFF'S EXHIBITS

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* * * * *

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
2 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
3 MATTER HEREIN:

4 PHILIP J. SMITH,
5 BEING FIRST DULY SWORN, TESTIFIED UNDER OATH AS
6 FOLLOWS:

7 EXAMINATION BY MR. ELWELL:

8 Q. MR. SMITH, WE'RE BACK FOR YOUR DEPOSITION PURSUANT
9 TO THE COURT'S ORDER COMPELLING YOU TO RETURN
10 AFTER LEAVING THE LAST ONE IN SEPTEMBER. ARE YOU
11 STILL RECOLLECTING ALL OF THE SORT OF GROUND RULES
12 AND PROCEDURES THAT GOVERN GIVING A DEPOSITION?

13 A. YES, AND I HAVE CONSULTED WITH OTHER ATTORNEYS
14 ABOUT WHAT I CAN AND CAN'T ANSWER.

15 Q. WHO HAVE YOU CONSULTED WITH?

16 A. I'VE CONSULTED WITH MULTIPLE ATTORNEYS.

17 Q. WHAT ARE THE NAMES OF THE ATTORNEYS YOU'VE
18 CONSULTED WITH?

19 A. THEY'RE OF NO CONSEQUENCE.

20 Q. THIS IS A DISCOVERY DEPOSITION, AND THAT'S NOT
21 PRIVILEGED INFORMATION. SO TELL ME WHAT THE NAMES
22 OF THE ATTORNEYS THAT YOU'VE CONSULTED WITH ARE.

23 A. THE CARPENTER LAW FIRM.

24 Q. WHO SPECIFICALLY THERE?

25 A. MR. CARPENTER.

1 Q. WHERE ARE THEY LOCATED?

2 A. ON CHURCH STREET.

3 Q. WHO ELSE HAVE YOU DISCUSSED THE CASE WITH?

4 A. THAT'S ALL AT THIS TIME CONCERNING THIS MATTER.

5 THEY'RE NOT REPRESENTING ME. SO I JUST WANT TO

6 MAKE SURE THAT'S CLEAR.

7 Q. IS ANYONE REPRESENTING YOU?

8 A. NO, I'M PRO SE AT THIS TIME.

9 Q. YOU BROUGHT WITH YOU SOME ORIGINAL EXHIBITS THAT

10 YOU HAD TAKEN WHEN YOU LEFT THE LAST DEPOSITION.

11 EXHIBIT 2 I'LL PASS BACK TO YOU. IT'S A COPY OF

12 PLAINTIFF'S INTERROGATORIES IN THIS CASE. JUST

13 FOR THE RECORD, THAT'S THE DOCUMENT THAT YOU'VE

14 BROUGHT WITH YOU TODAY?

15 A. YES.

16 Q. AND SINCE YOU LEFT THIS OFFICE IN SEPTEMBER WITH

17 THAT DOCUMENT, HAVE YOU ALTERED IT IN ANY WAY?

18 A. NO, I HAVE NOT.

19 Q. AND YOU HAVE HAD CUSTODY OF IT SINCE YOU LEFT?

20 A. YES, I HAVE.

21 Q. AND HAS IT BEEN IN YOUR HOME?

22 A. YES, IT HAS.

23 Q. THE ENTIRE TIME SINCE YOU LEFT?

24 A. I HAVE SHOWN IT TO AN ATTORNEY, YES.

25 Q. DIFFERENT THAN MR. CARPENTER?

1 A. NO.

2 Q. I'LL SHOW YOU EXHIBIT 3. THIS IS A COPY OF
3 PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS.
4 THE SAME SET OF QUESTIONS. THAT IS THE DOCUMENT
5 THAT YOU RETURNED HERE WITH TODAY?

6 A. YES, IT IS.

7 Q. AND YOU HAVE NOT ALTERED THAT DOCUMENT IN ANY WAY
8 SINCE YOU TOOK IT WITH YOU?

9 A. NO, SIR.

10 Q. AND IT HAS BEEN EITHER AT YOUR HOUSE OR BEING
11 TRANSPORTED BY YOU TO AN ATTORNEY'S OFFICE SINCE
12 SEPTEMBER?

13 A. YES, SIR.

14 Q. AND THE SAME QUESTION WITH NUMBER 4. THIS IS A
15 COPY OF PLAINTIFF'S REQUEST FOR ADMISSION. THAT
16 IS THE DOCUMENT THAT YOU BROUGHT WITH YOU TODAY?

17 A. YES, SIR.

18 Q. AND YOU HAVE HAD POSSESSION OF THAT DOCUMENT SINCE
19 YOU LEFT HERE IN SEPTEMBER?

20 A. YES, SIR.

21 Q. AND YOU HAVE NOT ALTERED THAT DOCUMENT IN ANY WAY
22 SINCE LEAVING HERE IN SEPTEMBER?

23 A. NO, SIR.

24 Q. HAVE YOU SERVED RESPONSES TO ANY OF THOSE
25 DISCOVERY REQUESTS?

1 A. TO THE COURT?

2 Q. TO ME OR TO THE COURT.

3 A. I DO NOT FEEL THAT I HAVE OTHER THAN WHAT WE'VE
4 ALREADY TAKEN, THE DEPOSITION.

5 Q. HAVE YOU PREPARED ANY WRITTEN RESPONSES TO ANY OF
6 THOSE EXHIBITS -- 2, 3, OR 4?

7 A. NO, I HAVE NOT. I FEEL THAT THE MAJORITY OF THESE
8 QUESTIONS HAVE ALREADY BEEN ANSWERED TO THE COURT
9 AND TO YOU THROUGH INFORMATION PROVIDED ALREADY.
10 SO THAT'S WHY I HAVEN'T DONE SO. AND I HAVE
11 MOTION TO THE COURT THAT I HAVE RESPONDED ON EACH
12 OF THESE ISSUES THAT I -- THAT WERE RELEVANT TO
13 THE COURT.

14 Q. WHEN HAVE YOU FILED ANY MOTIONS CONCERNING THAT?

15 A. I SENT YOU A COPY BACK AT THE END OF NOVEMBER.

16 Q. WHAT WAS YOUR MOTION ENTITLED?

17 A. IT WAS SEVERAL MOTIONS TO THE COURT SAYING THAT I
18 HAD RESPONDED AND -- THAT I HAD A MOTION FOR
19 DISMISSAL IN THERE. AND THAT'S ALL THAT I KNOW.

20 Q. DO YOU STILL HAVE A COPY OF EXHIBIT NUMBER 5?

21 A. THESE ARE THE ONLY -- THESE ARE THE ONLY ONES I
22 HAD WITH ME.

23 Q. I THINK THE COURT REPORTER'S GOT ONE. ALL RIGHT,
24 LET ME SHOW YOU WHAT WAS MARKED PREVIOUSLY AS
25 EXHIBIT NUMBER 5 AND ASK IF YOU'VE SEEN THAT

1 DOCUMENT BEFORE.

2 A. IS THIS MY LETTER TO YOU?

3 Q. IT'S ONE OF SEVERAL THINGS THAT YOU'VE WRITTEN.

4 A. THIS WAS MY FIRST LETTER TO YOU; IS THAT CORRECT?

5 Q. I DON'T KNOW.

6 A. OKAY, YES, BUT THESE WERE NOT ATTACHED HERE. I

7 MEAN TO THIS LETTER. SO I DON'T KNOW IF YOU'RE

8 PRESENTING THIS AS THE SAME PIECE OF EVIDENCE.

9 Q. JUST FOR THE RECORD, THE LAST FEW PAGES, WHICH ARE
10 USER I.D. HISTORIES FROM E-BAY, WERE NOT PART OF
11 THIS LETTER ORIGINALLY.

12 A. I DON'T THINK SO, BUT I DON'T KNOW.

13 Q. YOU MAY RECALL THAT WHEN YOU GOT UP AND LEFT LAST
14 TIME, WE WERE DISCUSSING YOUR CONSULTING ON
15 INTELLECTUAL PROPERTY WITH, AS YOU PUT IT IN HERE,
16 DOZENS OF COMPANIES.

17 A. YES.

18 Q. HAVE YOU CONSULTED FOR A FEE ON INTELLECTUAL
19 PROPERTY ISSUES?

20 A. NO, BECAUSE THEY'RE MY INTELLECTUAL PROPERTY.

21 Q. I THINK WE ESTABLISHED THAT YOUR CONSULTING
22 EXPERIENCE CONSISTS OF ATTEMPTING TO MARKET
23 INTELLECTUAL PROPERTY TO COMPANIES THAT PERHAPS
24 MAY MANUFACTURE A PRODUCT THAT YOU ENVISIONED?

25 A. YES.

1 Q. AND I THINK WE GOT FIVE OR SIX COMPANIES' NAMES.

2 ARE YOU AGREEING THAT IT'S NOT ACTUALLY DOZENS, AS
3 YOU INDICATED IN THIS LETTER?

4 A. YOU KNOW, I HAVE SPOKEN TO DOZENS, AND IT'S A
5 MATTER OF EXPOS AND, YOU KNOW, ONE-ON-ONE TALKS AT
6 EXPOS AND EVERYTHING ELSE. THOSE ARE THE MAIN
7 COMPANIES. THAT'S PLENTY ENOUGH FOR THAT ANSWER.

8 Q. DO YOU KNOW WHETHER IT'S DOZENS, AND CAN YOU NAME
9 DOZENS?

10 A. I COULD NAME DOZENS.

11 Q. WILL YOU PLEASE DO SO?

12 A. THAT'S ENOUGH. I MEAN, REALLY, IT'S THE GENERAL
13 MARKET THAT THOSE COMPANIES ARE IN. YOU KNOW, IF
14 I WERE TO SIT DOWN AND BE COMPELLED BY THE COURT
15 TO WRITE THOSE DOWN -- THOSE ARE IMMATERIAL TO
16 THIS POINT IN THE TRIAL. WE ARE NOT IN A PENALTY
17 PHASE OF THE TRIAL, NOR ARE WE IN A DISCOVERY
18 POINT FOR MY INCOME OR MY ABILITY TO PAY. WE'RE
19 HERE FOR A DEPOSITION ON A COURT ISSUE OF WHETHER
20 I'VE HAD TRADEMARK INFRINGEMENT. THAT IS THE
21 CURRENT MATTER BEFORE THE COURT. WE ARE NOT IN A
22 PENALTY PHASE. YOU WOULD HAVE TO FILE A SEPARATE
23 TRIAL FOR THAT, OR HAVE THE COURT'S -- THE COURT
24 ANSWER THAT AND SAY, YOU KNOW, WE NEED TO SET A
25 PENALTY PHASE TRIAL. WE'RE NOT IN THAT PART OF

1 THE COURT CASE YET. SO IT HAS NO RELEVANCE TO THE
2 MATTER AT HAND.

3 Q. I GUESS A COUPLE OF THINGS. THIS IS A DISCOVERY
4 DEPOSITION. AND SO YOUR ASSESSMENT OF WHAT'S
5 RELEVANT AND WHAT IS NOT ISN'T THE ISSUE. AND
6 ALSO --

7 A. IF I HAD AN ATTORNEY HERE, THEY HAVE TOLD ME THAT
8 I DON'T HAVE TO ANSWER THAT QUESTION. I'VE GIVEN
9 YOU THE BEST ANSWER ALREADY. I'VE GIVEN YOU AN
10 ANSWER THAT THE COURT WOULD BE SATISFIED WITH.

11 Q. BUT YOU TOLD ME IF YOU WERE CALLED ON TO DO IT,
12 YOU COULD NAME DOZENS OF COMPANIES.

13 A. I AM NOT IN A POSITION TO BE ABLE TO GO THROUGH MY
14 RECORDS AT THIS TIME TO NAME MORE THAN I ALREADY
15 HAVE. AND THAT IS MY HONEST ANSWER.

16 Q. BUT YOU'VE HAD THREE AND A HALF MONTHS SINCE YOU
17 WERE HERE LAST TO CONSIDER YOUR RESPONSE TO THAT
18 QUESTION, BECAUSE I ASKED IT BEFORE, CORRECT?

19 A. AND THAT IS -- I DID THE SAME ANSWER.

20 Q. BECAUSE YOU WOULD AGREE WITH ME --

21 A. BECAUSE YOU'VE CONTACTED THEM ALREADY. SO --

22 Q. WHY DO YOU THINK THAT?

23 A. WELL, I DON'T -- I MEAN, I'M JUST SAYING I THINK
24 THAT YOU'VE CONTACTED AT LEAST ONE OF THOSE.

25 Q. BASED ON WHAT?

1 A. THEY HAVE SOME INFORMATION THAT THEY MAY HAVE
2 REVEALED TO ME THAT YOU TRIED TO CONTACT THEM,
3 MAYBE INDIRECTLY. THEY MAY HAVE FOUND OUT ABOUT
4 IT ANOTHER WAY. THAT'S WHY IT'S CONFUSING. IT'S
5 IRRELEVANT.

6 Q. IT'S ALSO INCORRECT. I HAVEN'T CONTACTED ANYBODY
7 THAT YOU'VE TRIED TO SELL ANYTHING TO. YOU WOULD
8 AGREE THAT THE CONTEXT OF THIS PARAGRAPH INDICATES
9 THAT YOU'RE EXPRESSING SOME EXPERTISE IN THE AREA
10 OF INTELLECTUAL PROPERTY BECAUSE YOU HAVE
11 CONSULTED ON INTELLECTUAL PROPERTY WITH DOZENS OF
12 COMPANIES, PER THIS LETTER?

13 A. YES, I WOULD AGREE WITH THAT.

14 Q. BUT YOU'VE INDICATED THAT THIS --

15 A. AND I'M WELL RESPECTED BY THE COMPANIES THAT I'VE
16 GIVEN YOU FOR THOSE MATTERS.

17 Q. WHO WOULD INDICATE TO US THAT YOU WERE WELL
18 RESPECTED --

19 A. GRIFFIN TECHNOLOGY. PAUL GRIFFIN OF GRIFFIN
20 TECHNOLOGY.

21 Q. DID THEY BUY YOUR PRODUCT?

22 A. JACK CAMPBELL OF MAC MICE.

23 Q. DID ANYBODY IN ANY OF THESE COMPANIES BUY YOUR
24 PRODUCT?

25 A. IT'S NOT REALLY A BUY-A-PRODUCT ISSUE.

1 Q. OR OFFER TO HELP YOU MANUFACTURE IT?

2 A. I'VE HAD SEVERAL NEGOTIATIONS WITH GRIFFIN. I
3 MEAN THAT'S AN ONGOING PRODUCT. I MEAN THAT'S AN
4 ONGOING DISCUSSION.

5 Q. THIS IS THE TWO-POINTING DEVICE IDEA, CORRECT?

6 A. NO.

7 Q. TWO CURSORS ON THE SAME SCREEN?

8 A. NO.

9 Q. WELL, WHAT IS THE DEVICE?

10 A. THAT IS IMMATERIAL. I --

11 Q. AGAIN, YOUR ASSESSMENT OF WHAT IS MATERIAL AND
12 WHAT IS NOT IS ITSELF IRRELEVANT IN A DISCOVERY
13 DEPOSITION.

14 A. IF I HAVE A PATENT APPLICATION THAT IS --

15 Q. THAT IS OF PUBLIC RECORD.

16 A. HOLD ON. THAT HAS NOT BEEN REVEALED TO THE PUBLIC
17 THROUGH THE USPTO, I DO NOT HAVE TO ANSWER THAT
18 QUESTION. THAT IS A MATTER OF TRADE SECRET. YOU
19 REALLY SHOULD READ UP ON THAT, BECAUSE YOU
20 BATTERED ME AND BELITTLED ME LAST TIME OVER THIS.

21 MR. ELWELL:

22 LET'S GO OFF THE RECORD FOR A SECOND.

23 (DISCUSSION OFF THE RECORD)

24 WITNESS:

25 YOU JUST CALLED ME A TURD, AND YOU ALSO CALLED ME

1 NARCISSISTIC. YOU SAID YOU WILL GO AGAINST MY
2 HEALTH WISHES AND BETTER WISHES OF KEEPING ME HERE
3 ALL DAY UNTIL I'M TIRED AND CAN'T STAND IT
4 ANYMORE.

5 EXAMINATION RESUMED BY MR. ELWELL:

6 Q. FOR THE RECORD, NONE OF THAT WAS A THREAT. AND IF
7 YOU CONTINUE TO NOT RESPOND TO QUESTIONS, WHAT I
8 SAID IS YOU'LL BE HERE UNTIL YOU'RE VERY TIRED
9 BECAUSE I'M GOING TO KEEP YOU HERE UNTIL YOU
10 ANSWER MY QUESTIONS. AND THE COURT'S ORDERED YOU
11 TO STAY HERE UNTIL YOU'VE ANSWERED MY QUESTIONS.

12 A. OKAY.

13 MR. ELWELL:

14 I GUESS THE RECORD SHOULD REFLECT ALSO THAT MR.
15 SMITH HAS BROUGHT HIS OWN RECORDING DEVICE HERE,
16 AND IS PURPORTEDLY TAKING DOWN THE DEPOSITION
17 HIMSELF ON A COMPUTER.

18 EXAMINATION RESUMED BY MR. ELWELL:

19 Q. SO YOU'RE REFUSING TO ANSWER ANY QUESTIONS
20 CONCERNING THE INTELLECTUAL PROPERTY THAT YOU'VE
21 ATTEMPTED TO SELL?

22 A. I HAVEN'T REFUSED. I'VE ANSWERED THE QUESTIONS TO
23 THE BEST OF MY ABILITY.

24 Q. WHAT IS THE DEVICE THAT YOU TRIED TO SELL TO
25 GRIFFIN TECHNOLOGIES?

1 A. AN IPOD ADAPTER.

2 Q. AND IT ADAPTS TO WHAT?

3 A. THAT'S GOOD ENOUGH. COME ON, MR. ELWELL. REALLY.

4 Q. AGAIN --

5 A. I CANNOT REVEAL THAT. THAT IS A MATTER OF TRADE
6 SECRET. IT IS NOT PUBLISHED AT THE USPTO WEBSITE,
7 PERIOD. IT'S A PATENT APPROVE -- IT'S A PATENT
8 PENDING. EXCUSE ME.

9 Q. SO YOU'RE REFUSING TO ANSWER THAT QUESTION?

10 A. I'M NOT REFUSING TO ANSWER THE QUESTION.

11 Q. THEN ANSWER IT.

12 A. I'VE ANSWERED THE QUESTION.

13 Q. YOU HAVE NOT ANSWERED THE QUESTION.

14 A. OKAY, I REFUSE TO ANSWER THE QUESTION.

15 Q. WHAT DOES THE DEVICE ADAPT TO? YOU REFUSE TO
16 ANSWER?

17 A. I REFUSE TO ANSWER THE QUESTION. I REFUSE TO
18 ANSWER THAT QUESTION.

19 Q. JUST TO BE CLEAR THOUGH, YOUR CONSULTATION ON
20 INTELLECTUAL PROPERTY WITH DOZENS OF COMPANIES
21 CONSISTS OF ATTEMPTING TO SELL A PRODUCT TO THEM
22 OR PARTNER WITH THEM IN SOME SORT OF VENTURE, AND
23 NOT --

24 A. IN SOME ASPECTS, YES. WITH JACK CAMPBELL, IT WAS
25 TO MAKE HIM BECOME LEGAL WITH APPLE NAMING POLICY,

1 TO CONSULT WITH HIM ON NAMES OF PRODUCTS, TO
2 DISCUSS POTENTIAL PRODUCT DESIGNS WITH HIM.

3 Q. WERE YOU PAID FOR THIS?

4 A. NO.

5 Q. AND SO EVEN THOUGH THIS PARAGRAPH IMPLIES THAT YOU
6 ARE A CONSULTANT FOR HIRE TO INDUSTRY, THAT'S NOT
7 CORRECT?

8 A. IT DOESN'T IMPLY THAT AT ALL.

9 Q. I JUST WANT TO BE CLEAR ABOUT THAT. YOU'RE NOT
10 ATTEMPTING TO IMPLY THAT?

11 A. I WANT TO BE CLEAR THAT IT DOES NOT IMPLY THAT I'M
12 A CONSULTANT FOR HIRE ON INTELLECTUAL PROPERTY.

13 Q. YOU ALSO INDICATE HERE THAT YOU'VE ASSISTED MANY
14 ASSOCIATES IN COURT AND THEIR LEGAL COUNSEL AS A
15 CONSUMER ADVOCATE.

16 A. YES.

17 Q. WHO HAVE YOU ASSISTED IN COURT AMONG YOUR
18 ASSOCIATES?

19 A. JUST, YOU KNOW, FRIENDS.

20 Q. WHO?

21 A. YOU KNOW, OVER THE YEARS I'VE CONSULTED A LOT OF
22 PEOPLE ABOUT DIFFERENT THINGS. I MEAN IT'S --
23 YOU'RE BEING PICKY TO BE PICKY. THAT'S ALL YOU'RE
24 DOING. YOU'RE JUST SITTING HERE BATTERING ME AND
25 JUST BATTERING ME AND BATTERING ME AND BATTERING

1 ME, OVER AND OVER, ABOUT STUPID STUFF.

2 Q. YOU SENT ME THIS LETTER, AND I'M TRYING TO
3 ASCERTAIN WHAT THE MEANING OF --

4 A. WHAT RELEVANCE DOES THIS HAVE TO A PATENT -- I
5 MEAN TO A SERVICE MARK ISSUE?

6 Q. BECAUSE YOU HAVE INCLUDED IN THIS PARAGRAPH
7 CONCERNING THAT YOU WERE KNOWLEDGEABLE OF YOUR
8 CONSTITUTIONAL RIGHTS AND YOUR LEGAL
9 RESPONSIBILITIES CONCERNING REPORTING. ONE, THAT
10 YOU'VE CONSULTED ON INTELLECTUAL PROPERTY, WHICH
11 EVIDENTLY YOU HAVE NOT DONE IN ANY KIND OF
12 EDUCATIONAL CAPACITY AND, TWO, THAT YOU'RE A
13 CONSUMER ADVOCATE OF SOME SORT, YOU ASSIST
14 ASSOCIATES IN COURT AND LAWYERS IN COURT. IS
15 EITHER OF THOSE THINGS TRUE?

16 A. YES.

17 Q. HOW MANY TIMES HAVE YOU BEEN TO COURT ON BEHALF OF
18 AN ASSOCIATE?

19 A. I HAVEN'T BEEN TO COURT ON BEHALF OF ANYONE.

20 Q. THIS SAYS, "I'VE ASSISTED MANY ASSOCIATES IN
21 COURT." WOULD YOU AGREE THAT ONE COULD READ THAT
22 AND REASONABLY ASSUME THAT YOU HAVE APPEARED IN
23 COURT ALONGSIDE SOMEBODY FOR THE PURPOSE OF
24 ASSISTING THEM IN PROSECUTING OR DEFENDING A CASE?

25 A. IF -- I MEAN, IF THAT'S HOW YOU READ IT, I'M SORRY

1 YOU READ IT THAT WAY.

2 Q. YOU DIDN'T INTEND FOR IT THAT WAY, BECAUSE YOU'VE
3 NEVER BEEN TO COURT TO HELP AN ASSOCIATE.

4 A. I'VE NEVER TESTIFIED FOR SOMEBODY, NO.

5 Q. AND WHICH LAWYERS HAVE YOU ASSISTED PROSECUTING OR
6 DEFENDING CONSUMER ADVOCACY TYPE CASES?

7 A. I ASSISTED COUNSEL FOR COMPUTER CLINIC.

8 Q. WHO IS THAT?

9 A. I THINK THAT THAT WAS THE HERLONG LAW FIRM THAT
10 WAS AGAINST THEM, BUT I DON'T KNOW WHO IT WAS. I
11 CAN'T REMEMBER THE NAME.

12 Q. YOU DON'T KNOW HOW YOU WERE HELPING?

13 A. I CAN'T REMEMBER THE NAME.

14 Q. AND WHY DID YOU CONSULT WITH THEM?

15 A. BECAUSE I'M PRETTY FAMILIAR WITH INTELLECTUAL
16 PROPERTY AND INTELLECTUAL PROPERTY RIGHTS, BECAUSE
17 I --

18 Q. HOW IS IT THAT YOU'RE FAMILIAR WITH INTELLECTUAL
19 PROPERTY AND INTELLECTUAL PROPERTY RIGHTS?

20 A. YOU'RE TRYING TO GET BACK TO THE SAME QUESTION
21 OVER AND OVER AND OVER AGAIN. BECAUSE I HAVE
22 APPLIED FOR SEVERAL PATENTS. I HAVE CONSULTED
23 WITH GRIFFIN TECHNOLOGY, WHICH IS A LEADER IN THE
24 IPOD MANUFACTURING INDUSTRY ON MY PRODUCT, ON
25 THEIR PRODUCTS. THEY HAVE PRODUCED SEVERAL

1 PRODUCTS WHICH THEY ASK WHAT DO YOU THINK ABOUT
2 THAT, AND I GAVE MY INPUT INTO IT. I'VE BETA-
3 TESTED PRODUCTS FOR THEM. I'VE BETA-TESTED
4 PRODUCTS FOR APPLE. I HAVE PROVIDED MY INPUT BACK
5 TO APPLE FOR THAT. I CONSIDER THAT INTELLECTUAL
6 PROPERTY CONSULTING.

7 Q. HOW MANY BETA TESTERS DOES APPLE HAVE REGISTERED,
8 DO YOU THINK?

9 A. HUNDREDS.

10 Q. MAYBE THOUSANDS, RIGHT?

11 A. NO. IF I PROVIDE TECHNOLOGICAL INPUT BEYOND USAGE
12 INPUT, I WOULD CONSIDER THAT CONSULTING.

13 Q. SO OTHER THAN THAT ONE LAW FIRM THAT YOU CANNOT
14 RECOLLECT THE NAME OF, HAVE YOU HELPED ANYBODY
15 ELSE IN A CONSUMER ADVOCACY CASE?

16 A. YOU KNOW, I HELP PEOPLE ALL THE TIME WITH LIKE
17 GOING TO TRAFFIC COURT AND EVERYTHING.

18 Q. WHAT'S YOUR EXPERTISE IN TRAFFIC COURT?

19 A. I'M PRETTY WELL READ ABOUT TRAFFIC LAWS.

20 Q. WHY IS THAT?

21 A. I USED TO BE A SPEEDER, AND I USED TO GO -- I USED
22 TO GET CAUGHT FOR SPEEDING.

23 Q. AND THAT MAKES YOU AN EXPERT ON THE SUBJECT OF
24 TRAFFIC LAWS AND HOW TO AVOID BEING CONVICTED OF
25 TRAFFIC TICKETS?

1 A. NO, I DIDN'T SAY GET OUT OF TRAFFIC TICKETS. I
2 JUST SAID, YOU KNOW, IF YOU GO TO COURT, YOU
3 GET -- YOU CAN GET YOUR FINE REDUCED. IF YOU WERE
4 CAUGHT DURING A CERTAIN TIME OF DAY, THERE'S
5 THINGS -- THERE'S PROBLEMS WITH THE RADARS, YOU
6 KNOW. I TALK ABOUT ALL THAT.

7 Q. SO PEOPLE HAVE COME UP TO YOU AND SAID, "HEY, WHAT
8 DO I DO? I'VE GOT A HEARING COMING UP?" AND
9 YOU'VE OFFERED A FEW SUGGESTIONS FROM TIME TO TIME
10 ABOUT THAT?

11 A. THAT'S CORRECT.

12 Q. AND THAT WOULD BE ASSISTING LEGAL COUNSEL IN COURT
13 OR ASSOCIATES IN COURT?

14 A. THAT'S CORRECT.

15 Q. AND THAT IS RELEVANT EXPERTISE TO YOUR KNOWLEDGE
16 OF INTELLECTUAL PROPERTY IN ANY WAY, OR NO?

17 A. NO, AND I DON'T THINK THAT THAT CONSTRUES THAT.

18 Q. I'M SORRY?

19 A. I DON'T THINK THAT THAT CONSTRUES THAT OPINION
20 THAT YOU HAVE THERE.

21 Q. YOU DON'T THINK IT CONSTRUES IT? WHAT DOES THAT
22 MEAN?

23 A. I GOT A DICTIONARY HERE IN MY BAG HERE, IF YOU
24 NEED IT. I'LL LET YOU LOOK UP "CONSTRUED".

25 Q. I KNOW WHAT THE WORD IS. BUT IF YOU'RE USING IT

1 THE WAY I THINK IT MEANS, I THINK YOU'RE MISUSING
2 THE WORD. ARE YOU MEANING SOMETHING ELSE OTHER
3 THAN --

4 A. I DON'T THINK THAT THAT PARAGRAPH SAYS THAT. I
5 THINK IT SAYS I'VE CONSULTED ON INTELLECTUAL
6 PROPERTY. I'VE ALSO HELPED PEOPLE AS A CONSUMER
7 ADVOCATE. AND WHAT I MEAN AS CONSUMER ADVOCATE IS
8 THAT, YOU KNOW, I AM -- MY WEBSITE HAS BEEN UP
9 THERE FOR SIX YEARS, AND I HAVE TALKED ABOUT EBAY
10 DROP-OFF COMPANIES OTHER THAN YOUR OWN. I'VE
11 TALKED ABOUT -- YOU KNOW, I'VE TALKED ABOUT
12 CHARTER CABLE. I'VE TALKED ABOUT APPLE COMPUTER.
13 AND I'LL GIVE YOU A NAME, ROBERT AMBROGI, WHICH IS
14 AN ATTORNEY. HE OFTEN SAYS HE READS MY BLOG AND
15 GETS INFORMATION CONCERNING HIS LAWSUITS.

16 Q. HOW DO YOU SPELL HIS LAST NAME?

17 A. A-M-B-R-O-G-I.

18 Q. HE'S HERE IN TOWN?

19 A. NO.

20 Q. WHERE IS HE?

21 A. I BELIEVE HE'S IN TEXAS.

22 Q. HE READS YOUR BLOG TO ASSIST HIM IN HIS LAW
23 PRACTICE?

24 A. UH-HUH (AFFIRMATIVE). HE'S PART OF THE MEDIA
25 BLOGGERS ASSOCIATION.

1 Q. AND IN THE NEXT PARAGRAPH OF EXHIBIT NUMBER 5, YOU
2 INDICATE, "I'M HAVING ALL MY CORRESPONDENCE READ
3 BY A LEGAL REPRESENTATIVE." WHO IS THAT?

4 A. THAT WAS MR. CARPENTER.

5 Q. AND WERE YOU CHARGED FOR THAT SERVICE?

6 A. NO, HE'S A FRIEND OF MY FATHER'S.

7 Q. WHAT TYPE OF PRACTICE DOES MR. CARPENTER HAVE? DO
8 YOU KNOW?

9 A. I BELIEVE HE DOES BUSINESS LAW. I'M NOT SURE. I
10 KNOW HE'S INVOLVED IN THE LAWSUIT AGAINST THE
11 PICKENS COUNTY SCHOOL DISTRICT.

12 Q. THREE PARAGRAPHS DOWN FROM THAT, YOU INDICATE, "I
13 HAVE NOT RECEIVED AN OFFICIAL RESPONSE FROM THE
14 COURT AND MAY SEEK GROUNDS FOR DISMISSAL BASED ON
15 FRAUDULENT COURT ACTION." CAN YOU TELL ME WHAT
16 YOU'RE TALKING ABOUT THERE?

17 A. YOU SENT A LETTER TO BOTH ME AND MY ASSOCIATE, WHO
18 HAD NOTHING TO DO WITH THE ARTICLE. YOU
19 IMPROPERLY SERVED HIM A CEASE AND DESIST, AND I --
20 YOU KNOW, YOU MENTIONED A COURT CASE IN THERE
21 WITHOUT A CIVIL ACTION NUMBER OR A -- OR THAT YOU
22 WERE ACTUALLY TAKING ME TO COURT. IT WAS JUST --
23 IT LOOKED LIKE A TYPICAL CEASE AND DESIST THAT
24 CRUMMY ATTORNEYS SEND TO LITTLE SMALL PEOPLE TO
25 BATTER AND BELITTLE --

1 Q. HAVE YOU GOTTEN A LOT OF THOSE LETTERS?

2 A. HUH?

3 Q. HAVE YOU GOTTEN A LOT OF CEASE AND DESIST LETTERS?

4 A. I'VE GOTTEN TWO IN THE PAST.

5 Q. WHAT OTHER CEASE AND DESIST LETTERS HAVE YOU
6 RECEIVED?

7 A. ONE FROM JACK CAMPBELL AND ONE FROM BILL PALMER,
8 WHO YOU'VE BEEN IN CONTACT WITH, BOTH OF THEM.

9 Q. AND WHY DID MR. CAMPBELL SEND YOU A CEASE AND
10 DESIST LETTER?

11 A. BECAUSE I STARTED MY WEBSITE CALLED JACKWHISPERS.
12 COM.

13 Q. SO HE FELT YOU WERE DEFAMING HIM OR MAKING USE OF
14 HIS TRADE NAME?

15 A. HE FELT SO.

16 Q. AND WHAT WAS THE RESULT OF YOUR CEASE AND DESIST
17 LETTER, YOUR RECEIPT OF THAT?

18 A. I SENT HIM A SIMILAR LETTER THAT I SENT YOU, AND
19 HE REALIZED THAT IT WAS RIDICULOUS. HE PUT A
20 PRIVATE INVESTIGATOR ON ME FOR A LITTLE WHILE,
21 DISCOVERED THAT -- AS YOU WILL DISCOVER, THAT I AM
22 PENNILESS AND REALIZED HE COULDN'T DO ANYTHING
23 ABOUT IT. AND NOW WE ARE PRETTY GOOD FRIENDS.

24 Q. WHAT ABOUT MR. PALMER? WHAT DID HE TRY TO GET YOU
25 TO STOP DOING?

1 A. HE SENT ME A SIMILAR LETTER. I RESPONDED TO HIM
2 IN THE SAME WAY. AND HE SAID THAT IT WASN'T WORTH
3 HIS TIME. HE RESPONDED TO ME IN ANOTHER LETTER
4 THAT SAID IT WASN'T WORTH HIS TIME.

5 Q. ON THE NEXT PAGE OF EXHIBIT 5, IN THE FIRST FULL
6 PARAGRAPH, YOU INDICATE, "RESEARCH HAS INDICATED
7 TO ME THAT MR. SCHMIDT IS POTENTIALLY BEING
8 INVESTIGATED BY THE IRS."

9 A. UH-HUH (AFFIRMATIVE).

10 Q. WHAT'S YOUR INFORMATION CONCERNING THAT?

11 A. I CAN'T REVEAL THE SOURCE OF THAT INFORMATION,
12 BECAUSE IT IS PRIVATE. BUT THE -- I HAVE A CLIENT
13 OF HIS THAT HAS INDICATED TO ME THAT THE SALE OF
14 HIS HEALTH CARE COMPANY WAS UNDER INVESTIGATION BY
15 THE IRS.

16 Q. WHO IS THAT CLIENT?

17 A. THAT'S THE BEST I CAN TELL YOU. THANK YOU. I'M
18 REFUSING TO ANSWER THAT QUESTION. I WAS TOLD THAT
19 YOU CAN -- IF YOU THERE'S ANY QUESTION, YOU NEED
20 TO CHECK IT OFF AND YOU NEED TO COMPEL THE COURT
21 TO MAKE ME ANSWER THAT QUESTION.

22 Q. YOU UNDERSTAND THAT YOU'RE HERE ON AN ORDER TO
23 COMPEL. SO THAT'S ALREADY BEEN DONE ONCE.

24 A. YOU HAVEN'T SUBMITTED THOSE QUESTIONS TO THE
25 COURT.

1 Q. YOU'VE BEEN ORDERED TO STAY HERE UNTIL THE
2 DEPOSITION IS COMPLETED.

3 A. OKAY, FINE. YOU HAVEN'T SUBMITTED THOSE QUESTIONS
4 TO THE COURT, AND THEY HAVE NOT APPROVED THOSE
5 QUESTIONS. THEY DID NOT -- AND THEY SAID THAT I
6 AM TO ANSWER TO THE BEST OF MY ABILITY.

7 Q. WHO SAID THAT?

8 A. THE CLERK OF COURT.

9 Q. WHEN?

10 A. A COUPLE WEEKS AGO WHEN I GOT THIS.

11 Q. IF YOU KNOW THE NAME, THEN THE BEST OF YOUR
12 ABILITY IS NOT REFUSING TO ANSWER. IT'S TELLING
13 ME THE NAME.

14 A. OKAY.

15 Q. WHAT'S THE NAME?

16 A. THAT'S WHERE I'M AT.

17 Q. WHAT DOES THAT MEAN?

18 A. THAT'S THE ANSWER I'M GIVING YOU.

19 Q. YOU'RE REFUSING TO TELL ME THE NAME --

20 A. YES.

21 Q. -- OF HOW YOU --

22 A. YES.

23 Q. BUT YET YOU'VE SENT THIS LETTER OUT INDICATING
24 THAT YOU BELIEVE MR. SCHMIDT IS BEING INVESTIGATED
25 BY THE INTERNAL REVENUE SERVICE?

1 A. YOU SENT ME A WHOLE BUNCH OF THREATS, AND SO I
2 RESPONDED WITH A COUPLE OF THINGS IN MY
3 POCKETBOOK.

4 Q. BUT, SEE, MINE ARE SUBSTANTIATABLE AND YOU'RE
5 REFUSING TO SUBSTANTIATE YOURS. SO I'M TRYING TO
6 FIND OUT --

7 A. IF IT CAME TO COURT, WHERE THAT WAS ASKED IN COURT
8 AND WAS FOUND RELEVANT IN COURT, I COULD
9 SUBSTANTIATE IT. YOU CAN COMPEL THE COURT TO MAKE
10 ME ANSWER THAT QUESTION. THANK YOU.

11 Q. WHAT WAS THE NATURE OF THE INVESTIGATION THAT YOU
12 BELIEVE MR. SCHMIDT IS THE TARGET OF?

13 A. NOT PAYING PROPER TAXES.

14 Q. AND IS THERE ANYTHING ELSE?

15 A. IS IT TRUE?

16 Q. IS THERE ANYTHING ELSE YOU BELIEVE HE'S BEING
17 INVESTIGATED FOR?

18 A. IS IT TRUE?

19 Q. I'M SORRY?

20 A. IS IT TRUE THAT HE'S BEING INVESTIGATED BY THE
21 IRS?

22 Q. THIS IS A DEPOSITION OF YOU, NOT OF ME.

23 A. OKAY. WELL, THEN, I MEAN, IF YOU WANTED IT -- YOU
24 KNOW, IF YOU DON'T WANT THAT TO BE PUBLIC, THEN,
25 YOU KNOW, I WOULDN'T BRING THIS INTO THE RECORD.

1 Q. THIS IS A LETTER THAT YOU PUBLISHED IN A CASE THAT
2 ALREADY INVOLVES DEFAMATION CLAIMS. DO YOU
3 UNDERSTAND THAT THIS SORT OF CLAIM IS DEFAMATORY
4 TO MR. SCHMIDT AND HIS BUSINESS?

5 A. WE'RE NOT DISCUSSING THIS PARTICULAR ISSUE IN THIS
6 COURT CASE. WE ARE DISCUSSING THE ARTICLE --

7 Q. YOU BROUGHT IT UP IN THIS LETTER THAT YOU SENT
8 AND, AS FAR AS I KNOW, HAVE SENT TO THE COURT.

9 A. THIS LETTER WAS SENT TO YOU AFTER YOUR DEFAMATORY
10 CHARGE.

11 Q. THE CLOCK DOESN'T STOP.

12 A. YOU HAVE NOT PULLED THIS IN AS EVIDENCE AS AN
13 AMENDED MOTION FOR DEFAMATION. I MEAN, ARE YOU AN
14 ATTORNEY OR WHAT? I MEAN THE COURT HAS --

15 MR. ELWELL:

16 OFF THE RECORD.

17 (DISCUSSION OFF THE RECORD)

18 EXAMINATION RESUMED BY MR. ELWELL:

19 Q. ONE LAST TIME. THE QUESTION IS, WHAT IS THE BASIS
20 OF YOUR INFORMATION THAT YOU INDICATE IN THIS
21 LETTER THAT INFORMS YOU THAT MR. SCHMIDT IS
22 POTENTIALLY BEING INVESTIGATED BY THE IRS?

23 A. I HAVE BEEN MADE AWARE THAT HIS HEALTH CARE
24 COMPANY WENT -- AFTER IT WAS SOLD, HAD AN ISSUE
25 WITH PAYMENT OF TAXES FOR THAT MONEY.

1 Q. AND HOW IS IT THAT YOU CAME BY THAT INFORMATION?

2 A. THAT INFORMATION IS PRIVY TO ME AND IS --

3 Q. OF COURSE IT IS. THAT'S WHY I'M ASKING YOU FOR
4 IT. WHO TOLD YOU THAT?

5 A. I WILL NOT DISCUSS THAT.

6 Q. YOU'RE REFUSING TO ANSWER THE QUESTION?

7 A. YES.

8 Q. YOU INDICATE ALSO IN THIS PARAGRAPH THAT YOU WILL
9 MAKE THESE ITEMS PUBLIC RECORD IN A GREENVILLE
10 NEWS EDITORIAL ON THE SAME SUBJECT. HAVE YOU
11 WRITTEN SUCH AN EDITORIAL?

12 A. NO.

13 Q. HAVE YOU SUBMITTED EDITORIALS TO THE GREENVILLE
14 NEWS THAT HAVE NOT BEEN PUBLISHED?

15 A. NO.

16 Q. THE NEXT PARAGRAPH SAYS, "I PLAN TO MAKE A
17 CONTENTION WITH THE COURT THAT BIDZIRK DOES NOT
18 HAVE A VIABLE BUSINESS PLAN AND IS THEREFORE
19 SEEKING OPERATING INCOME THROUGH LITIGATION."
20 WHAT IS YOUR BASIS FOR THAT STATEMENT?

21 A. AMITHEONLYONE.ORG STATES THAT A VIABLE EBAY DROP-
22 OFF COMPANY MUST MAKE AT LEAST \$35,000 A MONTH TO
23 REMAIN AFLOAT. I HAVE INVESTIGATED MR. SCHMIDT'S
24 RENTAL PAYMENT ON HIS MILLS MILL STORE, HIS
25 CHERRYDALE STORE, AND THE UTILITIES FOR ALL THAT,

1 THE AVERAGE UTILITIES FOR THOSE LOCATIONS, THE
2 PAYMENT THAT HE MAKES TO THE ACCOUNTANT, THE
3 PAYMENT THAT HE WAS MAKING TO HIS PHOTOGRAPHER,
4 THE PAYMENT TO MINIMUM WAGE BIDZIRK EMPLOYEES, THE
5 COST OF THE VAN, THE COST OF ADVERTISING. ALL OF
6 THAT DOESN'T EVEN COME CLOSE TO PAYING EVEN ONE
7 ONE-HUNDREDTH OF HIS MONTHLY EXPENSES.

8 Q. HOW HAVE YOU INVESTIGATED ALL THESE THINGS?

9 A. I CALLED ALL THE COMPANIES THAT THOSE WERE
10 ASSOCIATED WITH. I KNOW HOW MUCH IT COST TO WRAP
11 A CAR. I KNOW HOW MUCH IT COST TO BUY A VAN. I
12 KNOW HOW MUCH IT COSTS TO RENT THOSE LOCATIONS.

13 Q. HOW DO YOU KNOW THAT?

14 A. I CONTACTED THE CHERRYDALE POINT MANAGEMENT
15 COMPANY.

16 Q. WHEN DID YOU DO THAT?

17 A. BACK IN JULY. I CONTACTED THE --

18 Q. 2006?

19 A. YES.

20 Q. WHY DID YOU DO THAT?

21 A. BECAUSE YOU WERE SUING ME.

22 Q. WHAT DOES THAT HAVE TO DO WITH ME SUING YOU?

23 A. BY THE WAY, AMITHEONLYONE.ORG EXISTED WAY BEFORE
24 THAT INVESTIGATION. SO THAT'S WHERE I GOT THAT
25 INITIAL INFORMATION, AND THEN I FOLLOWED UP. I

1 ALSO CALLED ATLANTIC MANAGEMENT COMPANY OVER AT --
2 WHATEVER THE WOODRUFF ROAD, THE POINT PLACE, IS
3 CALLED. AND THEIR RENT WAS \$3,500 A MONTH. THEY
4 WERE NOT EVEN MAKING HALF OF THAT IN PROFIT A
5 MONTH.

6 Q. DO YOU HAVE ANY INFORMATION THAT TELLS YOU WHAT
7 BIDZIRK'S MONTHLY RECEIPTS ARE?

8 A. IT'S ALL UP ON EBAY.

9 Q. WHY IS IT ALL UP ON EBAY?

10 A. I LOOK EVERY SINGLE DAY AND PULL THEIR AUCTIONS UP
11 FOR THE PAST 30 DAYS THAT END.

12 Q. DO YOU KNOW IF BIDZIRK HAS ANY OTHER INCOME
13 SOURCES BESIDES EBAY?

14 A. NOT THAT THEY PROMOTE.

15 Q. SO THAT'S NO?

16 A. NO, I DO NOT KNOW THAT.

17 Q. DO YOU KNOW WHETHER BIDZIRK HAS VENTURE CAPITAL
18 FUNDING OR OTHER FUNDING TO OPERATE THE BUSINESS
19 UNTIL IT IS PROFITABLE, IF IT'S NOT PROFITABLE
20 NOW?

21 A. ACCORDING TO AMITHEONLYONE.ORG, IT IS NOT POSSIBLE
22 FOR A LOCATION IN A SMALL CITY LESS THAN A MILLION
23 POPULATION TO SURVIVE UNLESS THEY MAKE \$35,000 A
24 MONTH. AND THAT'S SPLIT IN HALF. \$17,500 A MONTH
25 THAT YOU HAVE TO PULL IN, IN INCOME. THESE STORES

1 ARE GOING OUT OF BUSINESS TO THE TUNE OF TWO A
2 DAY.

3 Q. BIDZIRK, AS FAR AS YOU KNOW, HAS NOT HAD A STORE
4 CLOSE?

5 A. I HAVE EVIDENCE HERE IN MY LAPTOP THAT THEY ARE NO
6 LONGER A REGISTERED USER FOR TWO MONTHS ON EBAY.

7 Q. DO YOU KNOW WHETHER THEY'RE CLOSING A STORE?

8 A. THEY ALSO WERE OFF OF EBAY WITH THE BIDZIRK --

9 Q. ARE YOU ANSWERING MY QUESTION, OR JUST RESPONDING
10 IN SOME KIND OF --

11 A. I AM ANSWERING IT.

12 Q. DO YOU KNOW IF THEY'RE CLOSING A STORE OR NOT?

13 A. THEY HAD ON THEIR WEBSITE THAT THEY WERE OPENING
14 MULTIPLE STORES WITHIN THE NEXT YEAR, AND THOSE
15 HAVE NOT MATERIALIZED.

16 Q. HOW MANY STORES ARE YOU AWARE OF THAT BIDZIRK HAS
17 NOW?

18 A. THREE. WELL, TWO AND A WAREHOUSE, I THINK, WHERE
19 THEY DO CARS OR SOME -- BE A LARGE INVENTORY.

20 Q. AND WHAT'S THE CONTENTION THAT YOU HOPE TO MAKE
21 WITH THE COURT? EVEN ASSUMING THAT BIDZIRK'S
22 OPERATING AT A LOSS EVERY MONTH, WHY DO YOU THINK
23 THE COURT'S INTERESTED IN THAT?

24 A. YOU DON'T HAVE A VIABLE BUSINESS PLAN. SO --

25 Q. WHAT DOES THAT HAVE TO DO WITH ANYTHING INVOLVED

1 IN THIS CASE?

2 A. SO YOU'RE SUING ME TO EITHER MAKE IT LEGIT,
3 BECAUSE HE CAN'T PROVE TO HIS WIFE THAT IT WON'T
4 WORK.

5 Q. WHAT DOES THAT MEAN?

6 A. I MEAN -- IT MEANS WHAT IT MEANS. YOU'RE SEEKING
7 SOME KIND OF VINDICATION OR OPERATING INCOME, OR
8 SOME KIND OF REASON WHY THIS BUSINESS IS FAILING.
9 AND YOU'RE BLAMING IT ON ME, WHEN THESE BUSINESSES
10 ARE GOING OUT OF BUSINESS TO THE TUNE OF TWO A
11 DAY.

12 Q. AND DO YOU KNOW THAT BIDZIRK IS FAILING?

13 A. THEY'RE NOT MAKING ENOUGH FOR OPERATING INCOME.

14 Q. BUT YOU BASE THAT ON SOME CONJECTURE BASED ON SOME
15 OTHER WEBSITE THAT YOU'VE READ?

16 A. BASED ON WHAT IS PUBLIC. AND, YOU KNOW, I
17 COULD -- I GUESS IN MY DEPOSITION, I'LL ASK YOU
18 FOR YOUR TAX RECORDS AS FAR AS BIDZIRK GOES FOR
19 THE YEAR OF 2006. I'M PRETTY SURE THAT I'LL BE
20 ABLE TO PROVE THAT.

21 Q. AT THE TIME YOU MADE THIS STATEMENT THOUGH, YOU
22 DON'T HAVE ANY PROOF OF THAT?

23 A. I DO HAVE REASONABLE OPINION THAT THAT'S THE
24 TRUTH.

25 Q. YOU SAID THAT BIDZIRK IS SEEKING OPERATING INCOME

1 THROUGH LITIGATION. WHAT DOES THAT MEAN?

2 A. I GUESS HE THOUGHT THAT I HAD A WHOLE BUNCH OF
3 MONEY AND THAT I COULD --

4 Q. WELL, LET'S ASSUME THAT WE KNOW THAT YOU DON'T
5 HAVE ANY. SO WHY WOULD THIS STATEMENT BE
6 ACCURATE?

7 A. YOU'RE NOT MAKING -- IF HE'S NOT MAKING ENOUGH
8 MONEY MONTH TO MONTH, I MEAN, I GUESS HE HAS TO
9 SAY, WELL, YOU KNOW, LET'S SUE FOR IT.

10 Q. BUT YOU'RE BASICALLY JUDGMENT-PROOF, AREN'T YOU?
11 YOU DON'T HAVE ANYTHING TO PAY A JUDGMENT WITH?

12 A. THAT'S CORRECT.

13 Q. SO MR. SCHMIDT IS AWARE OF THAT. SO WHY WOULD --

14 A. HE WASN'T AWARE OF THAT AT THE TIME OF THIS
15 LETTER.

16 Q. DO YOU HAVE SOME INFORMATION THAT CAUSES YOU TO
17 BELIEVE THAT MR. SCHMIDT THOUGHT YOU HAD A LOT OF
18 ASSETS PRIOR TO THE TIME THAT YOU WERE SUED?

19 A. APPARENTLY YOU GUYS THOUGHT THAT I MADE A WHOLE
20 BUNCH OF MONEY OFF MY WEBSITE, AND THAT --

21 Q. WHY DO YOU THINK THAT?

22 A. BECAUSE YOU SAID SO IN COURT. YOU SAID HE --

23 Q. NO, I DIDN'T.

24 A. YES, YOU DID. I MEAN, GOD, COME ON, MAN. GEEZ.

25 Q. WELL, THAT WASN'T SAID. SO --

1 A. DID YOU OR DID YOU NOT SAY THAT I MAKE AN INCOME
2 OFF OF MY WEBSITE?

3 Q. YOUR WEBSITE DOESN'T QUALIFY FOR THE COMMERCIAL
4 EXCEPTION TO THE DILUTION RULES IN LANHAM. THAT'S
5 WHAT I SAID, AND THE COURT AGREED. THERE'S A CASE
6 ON POINT ABOUT IT. IT HAS NOTHING TO DO WITH
7 WHETHER I INDICATED TO THE COURT YOU MADE ANY
8 SPECIFIC AMOUNT OF MONEY DOING SO. THAT'S NOT THE
9 LEGAL ISSUE.

10 A. BUT THEY ALSO RULED THAT I WAS NEWS AND NEWS
11 COMMENTARY.

12 Q. THAT PART'S BEEN APPEALED.

13 A. TWICE. LOST TWICE.

14 Q. IT'S NOT BEEN APPEALED TWICE.

15 A. WELL, IT WAS DROPPED TO A DIFFERENT COURT, AND
16 THEN THAT COURT MADE THE DECISION, AND YOU
17 APPEALED THAT.

18 Q. SO JUST TO GET THIS STRAIGHT, YOU DON'T HAVE ANY
19 IDEA ABOUT BIDZIRK'S BUSINESS PLAN OTHER THAN YOU
20 HAVE --

21 A. YES, I DO.

22 Q. -- A FIGURE IN MIND THAT BIDZIRK'S SUPPOSED TO
23 EARN, AND YOU DON'T BELIEVE THEY'RE EARNING IT,
24 BUT YOU'RE TAKING A GUESS AS TO WHETHER THEY'RE
25 EARNING IT OR NOT.

1 A. I'M MAKING A VERY REASONABLE ASSUMPTION BASED ON
2 MARKET RESEARCH FOR THIS AREA. I HAVE ALSO
3 CONTACTED CHERYL BERG AND ASKED WHAT THE MARKET
4 RESEARCH FOR THIS AREA IS. CHERYL BERG IS THE
5 OWNER OF I SOLD IT OVER ON WOODRUFF ROAD, OR THE
6 FORMER OWNER OF I SOLD IT ON WOODRUFF ROAD. AND I
7 MADE THAT ASSUMPTION OFF OF A VERY REASONABLE
8 MARKET RESEARCH.

9 Q. BUT AS YOU SIT HERE, YOU DON'T KNOW WHETHER
10 BIDZIRK'S MAKING A PROFIT OR NOT?

11 A. I DO NOT.

12 Q. AND YOU'RE ABSOLUTELY AWARE THAT BIDZIRK IS NOT
13 GOING TO EARN ANY OPERATING INCOME BY LITIGATING
14 AGAINST YOU?

15 A. I AM AWARE OF THAT. AND BY THE WAY, YOUR VERY
16 LINE OF QUESTIONING IS ANSWERED RIGHT AFTER THAT.
17 AND I DON'T KNOW WHY YOU'RE GOING TO ASK ME THAT.
18 AFTER ACCOUNTING FOR RENT, EMPLOYMENT, AND
19 OPERATING COSTS BETWEEN TWO LOCATIONS AND LOOKING
20 AT THE TOTAL NUMBER OF AUCTIONS OVER A 30-DAY-
21 PERIOD, IT IS IMPOSSIBLE, AS I HAVE ACCOUNTED FOR,
22 FOR BIDZIRK TO BE PROFITABLE.

23 Q. WELL, I'M JUST ASKING YOU THE BASIS FOR THIS
24 STATEMENT.

25 A. AND I GIVE YOU THE EVIDENCE RIGHT THERE.

1 Q. THAT'S NOT EVIDENCE. THAT'S JUST MORE WRITING BY
2 YOU.

3 A. NO. THE TOTAL NUMBER OF AUCTIONS OVER A 30-DAY-
4 PERIOD, THE OPERATING COSTS BETWEEN TWO LOCATIONS.

5 Q. BUT YOU'RE BASING THAT ON A TELEPHONE CALL YOU
6 MADE ABOUT WHAT'S THE RENT ON THAT SPOT, WHAT'S
7 THE RENT ON THAT LOCATION IN THAT SHOPPING CENTER?
8 OR DID YOU ASK ABOUT A DIFFERENT LOCATION THAN
9 ANYWHERE BIDZIRK ACTUALLY IS LOCATED?

10 A. NO, I ASKED WHAT THE RENT FOR THAT PARTICULAR
11 LOCATION WAS.

12 Q. AND WHO DID YOU SPEAK TO?

13 A. WHOEVER THE MANAGEMENT COMPANY IS. YOU KNOW, I
14 DON'T RECALL, BECAUSE THIS WAS WRITTEN A LONG TIME
15 AGO, YOU KNOW, BECAUSE WE -- BECAUSE YOU'VE
16 EXTENDED THE DUE PROCESS OUT SO LONG TO CONVOLUTE
17 THE ISSUE.

18 Q. WHAT DOES THAT MEAN?

19 A. YOU'VE MADE THIS -- YOU'VE DRAWN THIS OUT SO LONG
20 THAT THESE -- MOST OF THESE CONVERSATIONS AREN'T
21 EVEN RELEVANT ANYMORE.

22 Q. AND HOW IS THAT --

23 A. BECAUSE I DON'T KNOW THE NAMES. I CAN'T REMEMBER
24 THE NAMES.

25 Q. DID YOU CALL SOMEBODY UNDER THE PRETENSE THAT YOU

1 WORKED FOR BIDZIRK AND YOU NEEDED TO VERIFY THE
2 RENT?

3 A. NO. THEY HAD A LOCATION RIGHT NEXT TO THEM, AND
4 I --

5 Q. SO YOU DIDN'T ASK ABOUT BIDZIRK'S ACTUAL LOCATION.
6 YOU ASKED ABOUT A COMPARABLE PIECE OF SPACE?

7 A. THAT IS CORRECT.

8 Q. SO YOU DIDN'T CALL AND SAY, "WHAT'S BIDZIRK PAYING
9 ON THAT --

10 A. THEY CAN'T REVEAL THAT INFORMATION TO ME.

11 Q. THAT'S WHAT I WAS TRYING TO GET AT.

12 A. BUT I ALSO ASKED PORT CITY JAVA, AND THEY WERE --
13 THEY DID REVEAL IT TO ME, AND ALL OF THE OTHER
14 BUSINESSES IN THERE DID REVEAL THEIR INCOME --
15 THEIR RENTAL PAYMENT TO ME. SO I HAVE TO ASSUME
16 UNLESS MR. SCHMIDT, WHO I DON'T SEE HAD ANY
17 CONNECTIONS WITH THAT MANAGEMENT COMPANY, AS FAR
18 AS I COULD TELL, GOT THE SAME KIND OF GENERAL DEAL
19 OR MAYBE HE MADE A LONGER RENT AND GOT SLIGHTLY
20 OFF. BUT IT'S WITHIN THE BALLPARK.

21 Q. AND AGAIN YOU'RE JUST TAKING A GUESS ABOUT THAT?

22 A. YES, I AM.

23 Q. AND YOU FEEL COMFORTABLE GOING AHEAD AND
24 PUBLISHING SOME --

25 A. YES, I DO.

1 Q. -- INFLAMMATORY REFERENCE ABOUT BIDZIRK'S BUSINESS
2 PLAN NOT BEING VIABLE?

3 A. YES, I DO.

4 Q. YOU INDICATE ALSO THAT THE WHOLE OF BIDZIRK IS
5 OPERATING ON EBAY ON FALSE PRETENSES. WHAT DOES
6 THAT MEAN?

7 A. THAT MIGHT BE WHY THOSE TWO ARE THERE. ACCORDING
8 TO MY EBAY POWER REP, YOU ARE NOT ALLOWED TO HAVE
9 THESE -- YOU'RE NOT ALLOWED TO TAKE A CONSUMER
10 I.D. AND MAKE IT INTO A COMMERCIAL I.D. ON EBAY.

11 Q. AND ARE YOU INJURED IN ANY WAY BY THAT?

12 A. YES, BECAUSE YOU'RE SAYING THAT YOU'VE BEEN IN
13 BUSINESS ON EBAY SINCE OCTOBER 6TH, 2004, AND JULY
14 22ND, 2003, WHEN BIDZIRK ACTUALLY STARTED IN APRIL
15 OF 2005, AS FAR AS I'M AWARE.

16 Q. EVEN ASSUMING THAT THAT'S SOMEHOW NOT KOSHER UNDER
17 EBAY'S INTERNAL RULES, DOES THAT INJURE YOU
18 PERSONALLY AT ALL?

19 A. YES, BECAUSE IF MY -- IF SOMEONE IS SUSPECTING OF
20 PROBLEMS WITH BIDZIRK -- SAY THEY HAD A PROBLEM
21 WITH ONE OF THE ITEMS THAT THEY CONSIGNED. THEN
22 THEY COULD SAY, WELL, YOU'VE BEEN ON EBAY SINCE
23 2003. THAT MAKES A BIG DIFFERENCE, BECAUSE I'VE
24 BEEN ON EBAY TEN YEARS. I GET A LOT MORE RESPECT
25 FOR WHAT I'M DOING. BUT THEY CAN'T LEGITIMATELY

1 SAY THAT THEY'VE BEEN ON EBAY SINCE JULY 22ND,
2 2003. THAT WAS BEFORE JILL AND TY EVER MET, I
3 THINK.

4 Q. DOES THE FACT THAT THE I.D.'S ARE ARRANGED THE WAY
5 THEY ARE, HAS IT CAUSED ANY INJURY TO YOU
6 PERSONALLY?

7 A. POTENTIALLY.

8 Q. SO THAT'S NO, IT HASN'T YET?

9 A. I'M NOT ABLE TO TELL THAT. THEY DIDN'T GET NEARLY
10 WHAT I THOUGHT THEY WOULD FOR MY AUCTIONS. AND SO
11 I DON'T KNOW WHETHER THAT HURT ME OR NOT.

12 Q. DO YOU KNOW IF THAT HAS ANYTHING TO DO, EVEN
13 ASSUMING THAT'S TRUE, WITH HOW BIDZIRK IDENTIFIES
14 ITSELF ON EBAY?

15 A. YES.

16 Q. HOW DOES THE VALUE OF --

17 A. ON REPUTATION. A MULTI-YEAR REPUTATION ON EBAY
18 MEANS A LOT TO YOUR CREDIBILITY, AS FAR AS YOU'RE
19 A SELLER.

20 Q. BUT WHEN YOU GAVE ALL THIS INVENTORY TO BIDZIRK,
21 YOU KNEW THAT THEY HADN'T OPENED THE STORE UNTIL
22 APRIL OF 2005. SO WHY WOULD YOU TRADE IN YOUR --

23 A. BUT I DIDN'T KNOW THIS INFORMATION TILL AFTER
24 THAT.

25 Q. WHY WOULD YOU TRADE IN YOUR TEN YEARS' WORTH OF

1 RESPECT ON EBAY, AS YOU PUT IT, FOR THE STATUS OF
2 A RELATIVE NEWCOMER ON EBAY?

3 A. I'M SURE THAT THAT'S MEANT AS A CUT OR A --

4 Q. WELL, JUST ANSWER THE QUESTION. WHY WOULD YOU
5 SWAP REPUTATIONS IF YOU HAD SUCH A GREAT ONE OVER
6 TEN YEARS FOR SOMEBODY WHO IS NEW?

7 A. I ENTRUSTED TY. I ENTRUSTED TY, WHO IS A CLIENT
8 OF A CLIENT OF MINE, SO THAT I COULD SUPPORT MY
9 CLIENT. I WOULD SUPPORT THEIR CLIENT. AND I
10 WOULD GIVE THEM SOME INVENTORY THAT I HAD TOO MUCH
11 OF THAT I COULDN'T POSSIBLY, BETWEEN ME AND MY
12 ASSOCIATE, WHO WERE BUSY AT THE TIME, WHO ARE
13 TRYING TO SEEK OPERATING INCOME FOR SOME PROJECTS
14 THAT WE HAVE, WHICH I'VE ALREADY GIVEN YOU. AND
15 WE WERE TRYING TO SEE OPERATING INCOME WHILE WE
16 TRAVELED THE COUNTRY TO PROMOTE THESE PRODUCTS.
17 THAT IS HOW ALL OF THIS WHOLE THING HAS HURT ME.
18 IT'S HOW EVERYTHING HAS JUST -- I MEAN --

19 Q. BUT NONE OF THAT HAS ANYTHING TO DO WITH HOW
20 BIDZIRK IDENTIFIES ITSELF ON --

21 A. YES, IT DOES.

22 Q. YOU KNEW WHEN YOU DEPOSITED THE INVENTORY THERE
23 THAT THEY HAD OPENED THE STORE IN APRIL OF 2005,
24 NO MATTER HOW LONG THE I.D. HAD BEEN REGISTERED;
25 ISN'T THAT CORRECT?

1 A. HOLD ON JUST ONE SECOND. I DON'T HAVE THIS EXACT
2 PAGE. DO YOU HAVE INTERNET HERE?

3 Q. YES, BUT I'M NOT GOING TO LET YOU ON MY ROUTER FOR
4 OBVIOUS REASONS.

5 A. WELL, ON THIS "HOW IT WORKS" PAGE, I BELIEVE IT
6 SAYS, "WE HAVE MANY YEARS OF EXPERIENCE IN B-TO-B
7 BUSINESS." THAT'S WHAT I BASED MY REPUTATION ON.

8 Q. WHEN DID YOU LEARN THAT BIDZIRK OPENED IN APRIL OF
9 2005? IS THERE ANY TIME PERTINENT TO THIS CASE
10 THAT YOU HAVEN'T KNOWN THAT?

11 A. OKAY, IF YOUR WEBSITE SAYS "MANY YEARS OF
12 EXPERIENCE AND EXPERTISE IN B-TO-B BUSINESS," I
13 MEAN, YEAH, THAT'S WHAT I BASED IT ON.

14 Q. HOW LONG HAVE YOU KNOWN THAT BIDZIRK OPENED IN
15 APRIL OF 2005?

16 A. SINCE I MET TY AT BARNES AND NOBLE.

17 Q. OKAY, THAT'S ALL, THEN. IS SOMETHING FUNNY?

18 A. WELL, YOU GUYS WERE LAUGHING AT THE LAST
19 DEPOSITION. SO --

20 Q. IS THERE SOMETHING FUNNY GOING ON NOW?

21 A. YEAH, IT'S PRETTY FUNNY.

22 Q. IS IT?

23 A. I MEAN IT'S FUNNY THAT THIS IS EVEN GOING ON. I
24 MEAN YOU'RE THE LAUGHINGSTOCK OF THE FRICKING
25 INTERNET.

1 Q. HOW DO YOU FIGURE THAT?

2 A. EVERYBODY IS SAYING THAT THAT LAWYER MUST BE
3 CRAZY. YOU READ IT. I SHOWED IT TO YOU.

4 Q. WELL, THAT'S THE PROFESSOR?

5 A. UH-HUH (AFFIRMATIVE). AND YOU SAID HE DIDN'T HAVE
6 ALL THE EVIDENCE.

7 Q. I THINK I POINTED OUT TO YOU THAT HE HASN'T READ
8 THE BRIEFS AND THE COMPLAINT.

9 A. I SENT HIM THE WHOLE THING.

10 Q. DO YOU HAVE A RECORDING OF MR. SCHMIDT ALLEGEDLY
11 MAKING THREATS TO YOU IN AUGUST OF 2005?

12 A. YES, I DO.

13 Q. IS THAT ON YOUR LAPTOP?

14 A. NO, IT'S PROBABLY ON A BACKUP.

15 Q. SO YOU'RE NOT SURE WHETHER IT'S ON YOUR LAPTOP?

16 A. I'M PRETTY SURE IT'S NOT ON MY LAPTOP.

17 Q. CAN YOU MAKE ABSOLUTELY SURE THAT IT'S NOT?

18 A. THIS IS MY BIDZIRK FOLDER.

19 Q. IF YOU CAN JUST LOOK AND TELL ME, THAT'S FINE.
20 YOU'RE UNDER OATH.

21 A. I DON'T THINK THAT'S IN HERE. I THINK THAT'S IN A
22 BACKUP. I'VE CHANGED LAPTOPS RECENTLY.

23 Q. ON THE THIRD PAGE OF THIS LETTER YOU INDICATE, "I
24 WOULD LIKE MR. SCHMIDT AND MR. ELWELL TO BE ON
25 NOTICE THAT, AS OF THIS POINT, I AM TAKING

1 REACTIONARY STEPS TO REMEDY THE SITUATION." WHAT
2 DOES THAT MEAN?

3 A. I REPORTED THAT -- THAT'S ANSWERED NEXT. I
4 REPORTED BIDZIRK TO THE BBB, WHICH YOU SAID THAT
5 WE'RE UNDER LITIGATION. SO YOU AVOIDED -- THAT'S
6 A SNEAKY LAWYER TRICK TO GET SOMEBODY OUT OF A BBB
7 REPORT. SECOND LETTER I REPORTED BIDZIRK TO
8 CONSUMER AFFAIRS, WHICH IS TRUE, WHICH IS ON THE
9 CONSUMER AFFAIRS WEBSITE, THE FTC WEBSITE. I WAS
10 PLANNING A SIDEWALK PROTEST OF BOTH BIDZIRK
11 LOCATIONS. I DID OBTAIN THE PERMIT, BUT I DID NOT
12 DO SO. AND LIKE I SAID, THEY'RE NOT THREATS.
13 THEY'RE RESPONSES AND MY RIGHTS. I HAVE THE RIGHT
14 TO PROTEST ACCORDING TO FIRST AMENDMENT. OF
15 COURSE, I HAD THE RIGHT TO PUBLISH THAT ARTICLE
16 UNDER THE FIRST AMENDMENT. AND SO YOU DON'T
17 RESPECT THAT EITHER.

18 Q. YOU INDICATED THAT I ENGAGED IN A SNEAKY LAWYER
19 TRICK?

20 A. YES.

21 Q. WHICH WAS INFORMING THE BETTER BUSINESS BUREAU
22 THAT THE CASE WAS IN LITIGATION?

23 A. YES.

24 Q. HOW IS THAT SNEAKY? IS THAT ANYTHING OTHER THAN
25 TRUE?

1 A. THAT'S TRUE, BUT ONLY A -- I MEAN IT'S KNOWN
2 ACROSS THE BOARD THAT THAT IS A TACTIC OF LAWYERS
3 TO NOT GET A BETTER BUSINESS BUREAU REPORT.
4 WEGENER MEDIA IN COLUMBIA DID THAT WHEN I REPORTED
5 THEM TO THE BETTER BUSINESS BUREAU.

6 Q. WHY DID YOU REPORT THEM TO THE BETTER BUSINESS
7 BUREAU?

8 A. BECAUSE THEY TOOK \$400 FROM ME FOR A PROCESSOR.

9 Q. AND HOW MANY TIMES HAVE YOU REPORTED OR MADE
10 COMPLAINTS TO THE BETTER BUSINESS BUREAU?

11 A. TWENTY OR 30.

12 Q. DO YOU REMEMBER AGAINST WHOM?

13 A. DIFFERENT BUSINESSES -- BEST BUY, SINGULAR.

14 Q. WHY HAVE YOU DONE THAT?

15 A. THAT IS, YOU KNOW, THE SAME THING. YOU KNOW, IT'S
16 ALWAYS SOMEBODY TRYING TO RIP ME OFF. THAT'S WHY
17 YOU REPORT PEOPLE TO THE BETTER BUSINESS BUREAU.

18 Q. DO YOU KNOW ANYBODY ELSE THAT'S REPORTED 20 OR 30
19 COMPLAINTS TO THE BETTER BUSINESS BUREAU?

20 A. I RUN A CONSUMER ADVOCACY WEBSITE.

21 Q. SO YOU SAY. DO YOU KNOW ANYBODY ELSE THAT'S MADE
22 20 OR 30 COMPLAINTS?

23 A. YEAH, JUST GO TO RIPOFFREPORT.COM AND LOOK AT HOW
24 MANY PEOPLE UNDER THEIR USER ACCOUNTS HAVE
25 SUBMITTED.

1 Q. SO YOU DON'T KNOW ANYBODY?

2 A. YOU KNOW, I DON'T KNOW MANY PEOPLE LIKE ME. I'M
3 UNIQUE.

4 Q. SO AGAIN, ASSUME --

5 A. YOUR CLIENT IS LAUGHING, BY THE WAY. SO, I MEAN,
6 IF YOU THINK SOMETHING'S FUNNY, YOU SHOULD ASK
7 HIM.

8 Q. ASSUME FOR THE SAKE OF MY QUESTION THAT THE BETTER
9 BUSINESS BUREAU CONTACTED ME AND ASKED ME THE
10 STATUS OF THE DISPUTE BETWEEN YOU AND BIDZIRK, AND
11 I SIMPLY SAID THAT THE CASE IS BEING LITIGATED.
12 YOU'D AGREE THAT THAT WOULDN'T BE ANYTHING EXCEPT
13 TRUE?

14 A. I AGREE THAT IT WOULD BE TRUE, BUT THE ISSUE
15 BEHIND THAT IS THAT AVOIDS A BETTER BUSINESS
16 BUREAU REPORT. AND IF SOMEBODY GOES ON TO THE
17 BETTER BUSINESS BUREAU WEBSITE, THEY DON'T SEE ANY
18 PROBLEMS. SO THEY MAY NOT REPORT THEIR PROBLEM
19 THEMSELVES. BUT IF THEY DO SEE A PROBLEM, THEY
20 MAY FEEL COMPELLED TO PRODUCE THEIR PROBLEM AS
21 WELL.

22 Q. DO YOU THINK THAT BIDZIRK OUGHT TO SUFFER FROM
23 HAVING A BETTER BUSINESS BUREAU COMPLAINT LISTED
24 UNDER ITS NAME IF, FOR INSTANCE, IT PREVAILS
25 COMPLETELY IN THIS CASE?

1 A. IT HASN'T SO FAR.

2 Q. THAT'S NOT MY QUESTION. WOULDN'T IT BE WRONG FOR
3 BIDZIRK TO HAVE A COMPLAINT POSTED AGAINST IT ON
4 THE BBB WEBSITE --

5 A. NO, BECAUSE ALL THE PROBLEMS THAT I HAD WITH THEM,
6 I HAD WITH THEM. MY BETTER BUSINESS REPORT HAD
7 NOTHING REALLY TO DO WITH THIS. IT HAD TO DO WITH
8 MY CONTRACT WITH BIDZIRK THAT THEY VIOLATED.

9 MR. ELWELL:

10 LET'S MARK THIS AS 6, PLEASE.

11 (EXHIBIT NO. 6 MARKED [1/4/06 BETTER BUSINESS BUREAU
12 LETTER]; ATTACHED)

13 EXAMINATION RESUMED BY MR. ELWELL:

14 Q. I'LL ASK YOU TO TAKE A LOOK AT EXHIBIT 6. TELL ME
15 IF YOU'VE SEEN THAT DOCUMENT BEFORE.

16 A. WAS THIS THE LETTER THAT THEY ALSO SENT ME FROM
17 THE BETTER BUSINESS BUREAU?

18 Q. I DON'T KNOW IF YOU GOT A COPY OR NOT.

19 A. AND WHERE IS THE RESPONSE? DO YOU HAVE THAT?

20 Q. THE RESPONSE?

21 A. DID YOU MAKE A RESPONSE?

22 Q. NOT IN A LETTER.

23 A. OKAY.

24 Q. UNDER SETTLEMENT --

25 A. I GUESS -- I MEAN, I GUESS I SAW THIS. I SUPPOSE

1 I HAVE THIS.

2 Q. DO YOU RECOGNIZE UNDER CUSTOMER VERSION AND
3 SETTLEMENT EXPLANATION ON THE SECOND PAGE THAT
4 THERE'S TEXT THERE THAT YOU WOULD HAVE AUTHORED OR
5 ENTERED ON TO THE MEDIUM WEBSITE?

6 A. YES.

7 Q. UNDER SETTLEMENT EXPLANATION, DO YOU SEE AT THE
8 END THERE IT SAYS, "I ALSO EXPECT BIDZIRK TO STOP
9 HARASSING ME CONCERNING MY CONSTITUTIONAL RIGHTS
10 TO PUBLISH MY STORY FACTUALLY ON MY WEBSITE"?

11 A. YES.

12 Q. WOULD YOU AGREE THEN, THAT YOU HAVE MADE THE
13 SUBJECT MATTER OF THIS CASE PART OF YOUR BETTER
14 BUSINESS BUREAU COMPLAINT?

15 A. OKAY.

16 Q. CONSUMER AFFAIRS IS WHERE?

17 A. THIS IS NOT PUBLISHED. THIS PIECE OF INFORMATION
18 IS NOT PUBLISHED ON THE BETTER BUSINESS BUREAU
19 WEBSITE. IT'S ONLY PUBLISHED AS AN EXPLANATION,
20 LIKE A GENERAL EXPLANATION. I DON'T KNOW IF YOU
21 KNOW HOW THE BETTER BUSINESS BUREAU WEBSITE WORKS,
22 BUT THIS IS NOT PUBLISHED EVER ON THE BETTER
23 BUSINESS BUREAU WEBSITE.

24 Q. I'M JUST ASKING IF YOU AGREE THAT YOU MADE THAT
25 CLAIM PART OF YOUR --

1 A. BUT I'M NOT CLAIMING THAT THIS IS PUBLIC, THAT
2 THIS --

3 Q. I DIDN'T ASK THAT.

4 A. OKAY, YES. AND I'VE ALSO SAID ON MY WEBSITE THAT
5 I REPORTED YOU TO THE BBB.

6 Q. AND CONSUMER AFFAIRS IS THE OFFICE LOCATED WHERE?
7 IN COLUMBIA OR GREENVILLE, OR WHERE IS IT?

8 A. I THINK THAT'S NATIONAL. THAT'S THE FEDERAL TRADE
9 COMMISSION.

10 Q. AND DID YOU GET ANY SORT OF INVESTIGATIVE
11 CORRESPONDENCE FROM THE FTC?

12 A. NO, YOU DON'T GET CORRESPONDENCE. IT SAYS ON THE
13 WEBSITE THAT THEY DON'T RESPOND.

14 Q. SO WHAT'S THE POINT IN REPORTING ANYBODY TO
15 CONSUMER AFFAIRS?

16 A. IF ENOUGH PEOPLE REPORT A CERTAIN BUSINESS, WHICH
17 EBAY DROP-OFFS ARE SIGNIFICANTLY REPORTED ON THE
18 FEDERAL TRADE COMMISSION WEBSITE, THEN THEY
19 INVESTIGATE. IT'S A -- IT'S LIKE A -- IT'S ALMOST
20 LIKE A CLASS ACTION TYPE EFFORT FROM THE FEDERAL
21 TRADE COMMISSION.

22 Q. SO TO YOUR KNOWLEDGE, NOT ENOUGH PEOPLE HAVE
23 REPORTED BIDZIRK TO FTC TO CAUSE --

24 A. A LOT OF PEOPLE HAVE REPORTED EBAY DROP-OFFS.
25 BIDZIRK IS AN EBAY DROP-OFF.

1 Q. DO YOU KNOW IF OTHER PEOPLE HAVE REPORTED BIDZIRK
2 TO THE FTC?

3 A. THAT'S NOT A -- THERE'S NO WAY FOR ME TO FIND THAT
4 OUT. THERE'S NOT INFORMATION AVAILABLE ON THE FTC
5 WEBSITE.

6 Q. AND WHY DID YOU NOT PHYSICALLY PROTEST BIDZIRK
7 LOCATIONS?

8 A. ONE IS BEING OF ALL THE DEPRESSION THAT THIS HAS
9 CAUSED ME. AND, TWO, I JUST -- I REALLY JUST
10 HAVEN'T HAD THE TIME. I'VE JUST -- I'VE BEEN
11 REALLY MAJORLY DEPRESSED OVER THIS PAST YEAR
12 CONCERNING THIS MATTER. IT TAKES A LOT OF COURAGE
13 TO DO THAT.

14 Q. WHY IS THAT?

15 A. IT TAKES A LOT OF COURAGE TO GET OUT IN FRONT OF A
16 BUSINESS AND PROTEST THEM.

17 Q. WELL, THAT'S NOT WHAT YOU'RE DOING ON THE INTERNET
18 IN FRONT OF MANY, MANY MORE PEOPLE THAN WOULD SEE
19 YOU WALKING AROUND IN A GORILLA SUIT ON THE
20 SIDEWALK ON MILLS AVENUE?

21 A. SURE. BUT, I MEAN, AGAIN, YOU KNOW, I MEAN
22 IT'S -- I'VE BEEN DEPRESSED. I'VE BEEN
23 SIGNIFICANTLY DEPRESSED OVER THIS PAST YEAR OVER
24 THIS ISSUE.

25 Q. HAVE YOU BEEN TREATED BY ANY PHYSICIAN CONCERNING

1 DEPRESSION?

2 A. I'VE BEEN TO THE DOCTOR SEVERAL TIMES AND I CAN
3 PRODUCE THOSE RECORDS.

4 Q. WHO IS YOUR PHYSICIAN?

5 A. DR. HUNTER IN CLEMSON.

6 Q. ARE YOU TAKING ANY MEDICATION?

7 A. NO, I'M NOT.

8 Q. HAVE YOU TAKEN ANY MEDICATION DURING THE PENDENCY
9 OF THIS CASE RELATED TO DEPRESSION?

10 A. NO, NOT DEPRESSION MEDICATION.

11 Q. HAVE YOU HAD ANY MEDICATION FOR DEPRESSION
12 PRESCRIBED TO YOU THAT YOU HAVE NOT HAD FILLED?

13 A. NO.

14 Q. BACK ON EXHIBIT 5, WHERE YOU HAVE THE NUMBERED
15 PARAGRAPHS THERE NEAR THE BOTTOM OF THE PAGE WE
16 WERE JUST ON --

17 A. OKAY.

18 Q. NUMBER 8, "SMITH IS AN AMATEUR DEALER." AND YOU
19 SAID, "THIS IS INSULTING. I TAUGHT EBAY AT
20 GREENVILLE TECH."

21 A. YES.

22 Q. WHEN DID YOU TEACH EBAY AT GREENVILLE TECH?

23 A. 2000 TO 2002, TO THE LEAP PROGRAM.

24 Q. WHAT IS THE LEAP PROGRAM?

25 A. IT'S THE FURTHER LEARNING, HIGHER LEARNING FOR

1 RETIRED PEOPLE AND FOR PEOPLE THAT DON'T WANT TO
2 GET A DEGREE. IT'S CONTINUING EDUCATION.

3 Q. HOW MANY SEMESTERS DID YOU TEACH?

4 A. THREE.

5 Q. HOW LONG WAS THE PROGRAM EACH TIME?

6 A. TWO HOURS EVERY THURSDAY NIGHT FOR SIX WEEKS.

7 Q. AND DID YOU HAVE A TITLE WHILE YOU WERE DOING
8 THAT --

9 A. WHAT DO YOU MEAN?

10 Q. -- RELATED TO GREENVILLE TECH? WERE YOU CALLED AN
11 ADJUNCT PROFESSOR OR GUEST SPEAKER, OR WHAT WAS
12 YOUR TITLE?

13 A. I MEAN -- I DON'T KNOW. I MEAN, I GOT -- I'LL
14 GIVE YOU THE PAY STUBS. I DON'T THINK THEY SAY
15 ANYTHING OTHER THAN MR. PHILIP SMITH.

16 Q. AND HOW MANY PEOPLE WERE IN A CLASS?

17 A. THEY RANGED FROM 15 TO 40.

18 Q. AND DID ANYBODY TEACH THE CLASS WITH YOU?

19 A. I HAD SEVERAL, YOU KNOW, GUEST SPEAKERS COME.

20 Q. WERE YOU HIRED ON A SEMESTER-BY-SEMESTER BASIS?

21 A. YES.

22 Q. AND DID YOU HAVE TO DEAL WITH THE SAME PERSON EACH
23 SEMESTER TO HAVE YOUR ARRANGEMENT RENEWED TO COME
24 BACK AND TEACH THE CLASS?

25 A. NO, IT WAS ALL RELATED TO EBAY UNIVERSITY, RIGHT

1 BEFORE THEY STARTED UP EBAY UNIVERSITY.

2 Q. WHO ACTUALLY SAID, OKAY --

3 A. A GUY NAMED DEAN DEVLIN.

4 Q. DEAN DEVLIN?

5 A. UH-HUH (AFFIRMATIVE)

6 Q. IS HIS GIVEN NAME DEAN, OR IS HE DEAN AS IN THAT'S
7 HIS TITLE WITH THE SCHOOL?

8 A. HIS GIVEN NAME IS DEAN.

9 Q. DO YOU KNOW WHY YOUR ENGAGEMENT AT GREENVILLE TECH
10 ENDED?

11 A. BECAUSE THEY STARTED TO REQUIRE A BACHELOR'S
12 DEGREE FOR ALL PROFESSORS TO TEACH.

13 Q. THEY FOUND OUT THAT YOU DIDN'T HAVE A COLLEGE
14 DEGREE?

15 A. IT'S NOT THAT THEY FOUND OUT. THE NEW REQUIREMENT
16 STARTED IN 2003 THAT YOU COULDN'T -- YOU HAD TO
17 HAVE A BACHELOR'S DEGREE TO TEACH ANY LEVEL OF
18 EDUCATION IN SOUTH CAROLINA.

19 Q. YOU INDICATE ON THE NEXT PAGE, UNDER NUMBER 16,
20 THAT ACCOUNTS THAT YOU LIST IN THIS LETTER ARE
21 BACKED UP BY MULTIPLE WITNESSES, ONE OF WHICH IS
22 AN OWNER OF A BUSINESS THAT SAW MR. SCHMIDT
23 VERBALLY ABUSE ME.

24 A. UH-HUH (AFFIRMATIVE).

25 Q. WHO IS THAT?

1 A. THE OWNER OF PORT CITY JAVA.

2 Q. WHO IS THAT?

3 A. I DON'T RECALL HIS NAME RIGHT NOW.

4 Q. AND YOU SAID HE WILL CONTEND IN COURT THAT HE
5 LOOKED AS THOUGH HE WAS ON THE EDGE OF PHYSICALLY
6 HARMING YOU?

7 A. BECAUSE HE OWNS SEVERAL LOCATIONS. I MEAN, I
8 COULD FIND HIM IF IT'S NECESSARY. WHEN HE PUT HIS
9 FINGER IN MY FACE AND ALMOST TOUCHED MY NOSE AND
10 THREATENED ME AND THEN WALKED OUT OF THE BUSINESS.
11 AND DAVE BUZZELL, MY ASSOCIATE, WAS AT THAT
12 MEETING, AND WAS APPALLED BY THAT ACTION. SO I
13 CAN HAVE HIM BACK IT UP AS WELL.

14 Q. AND YOU HAVE A TAPE RECORDING OF THAT MEETING?

15 A. YES, I DO.

16 Q. AND IS THAT ON YOUR LAPTOP?

17 A. NO, IT'S NOT.

18 Q. YOU'VE ASKED SEVERAL TIMES DURING THIS CASE TO
19 FIRST GRANT YOU YOUR REQUIRED MEDIATION. WHY IS
20 IT THAT YOU THINK THAT YOU'RE ENTITLED TO A
21 MEDIATION?

22 A. IF YOUR INTENT HERE IS TO RESOLVE THE MATTER, THEN
23 YOU SIT DOWN WITH ME AND BE REASONABLE INSTEAD OF
24 HARASSING ME LIKE YOU'VE DONE, AND GET A
25 RESOLUTION. THERE ARE MANY, MANY RESOLUTIONS THAT

1 WE COULD HAVE COME TO THAT ARE NON-COURT THAT I'M
2 SURE MR. SCHMIDT WOULD HAVE BEEN MUCH MORE HAPPY
3 WITH.

4 Q. DO YOU THINK I'M DOING SOMETHING THAT MAKES HIM
5 UNHAPPY RIGHT NOW?

6 A. YES.

7 Q. YOU DO?

8 A. YES.

9 Q. AND THIS IS BASED ON YOUR EXTENSIVE KNOWLEDGE OF
10 MR. SCHMIDT?

11 A. YES.

12 Q. I SEE. DO YOU THINK THAT I WOULD BE HERE IF I --

13 A. BASED ON THE LAST MEETING THAT I HAD WITH HIM AT
14 PORT CITY JAVA, AND HOW QUICK HE IS TO ANGER, AND
15 BASED ON -- AND BASED ON --

16 Q. DO YOU THINK I'M DOING ANYTHING BUT FOLLOWING MR.
17 SCHMIDT'S INSTRUCTIONS BY TAKING YOUR DEPOSITION?

18 A. I'M SURE YOU'RE FOLLOWING HIS INSTRUCTIONS. I --

19 Q. HOW ARE YOU BEING HARASSED?

20 A. HOW AM I BEING HARASSED? I MEAN, IS THAT A
21 RHETORICAL QUESTION?

22 Q. NO.

23 A. WELL, FIRST OF ALL, THERE'S NO ATTORNEY THAT I
24 HAVE SPOKEN TO -- I MEAN NO ATTORNEY THAT I'VE
25 SPOKEN TO ON LINE, NO PERSON IN BUSINESS THAT I'VE

1 SPOKEN TO ON LINE, NO OWNER OF AN EBAY DROP-OFF
2 STORE THAT I'VE SPOKEN TO THAT HAS GONE OUT OF THE
3 BUSINESS THAT WOULD POSSIBLY FOLLOW THIS LINE OF
4 BELITTLEMENT, HARASSMENT. AND THE FACT THAT
5 KNOWING THAT HE COULD HAVE HAD AN EASY RESOLUTION
6 ON THIS.

7 Q. I ASKED YOU WHAT'S BEEN DONE TO HARASS YOU WHEN
8 YOU SAID YOU'VE BEEN --

9 A. I'M TELLING YOU.

10 Q. -- HARASSED.

11 A. I'M TELLING YOU.

12 Q. AND THAT DOESN'T ANSWER THE QUESTION, I'M HARASSED
13 BECAUSE I'VE BEEN HARASSED.

14 A. I GET PAPERWORK, UNNECESSARY PAPERWORK ALL THE
15 TIME.

16 Q. WHEN IS THE LAST TIME YOU GOT ANY PAPERWORK FROM
17 ME?

18 A. A COUPLE WEEKS AGO.

19 Q. AND WHY WAS IT UNNECESSARY?

20 A. WELL, A LOT OF TIMES YOU CITE CASES THAT AREN'T
21 EVEN RELEVANT TO THIS ISSUE.

22 Q. AND YOU KNOW THAT BECAUSE OF YOUR LEGAL TRAINING
23 WHERE?

24 A. WELL, I MEAN, I THINK -- I MEAN I THINK THE COURT
25 HAS ALREADY SAID IN THE RULING, IN THE INJUNCTION

1 RULING THAT YOU WERE -- YOU'RE NOT ACCURATE IN
2 FILING THIS INFORMATION. SO, I MEAN, OBVIOUSLY
3 YOU'RE THE ONE THAT'S WRONG.

4 Q. I SEE.

5 A. IS THAT NOT TRUE?

6 Q. IS THERE SOME WAY THAT YOU FEEL YOU'VE BEEN
7 HARASSED OTHER THAN THE FACT THAT YOU GET SERVED
8 PAPERS IN THIS CASE, AS I'M REQUIRED TO DO UNDER
9 THE FEDERAL RULES?

10 A. YES. I FEEL THAT THIS HAS BEEN SUCH A DRAG ON MY
11 LIFE THAT IT'S HARASSING TO ME BECAUSE OF MY
12 STATUS WITH MY FAMILY NOW. I'VE LOST A LOT OF
13 FAVOR WITH MY FAMILY, BECAUSE THEY JUST THINK THIS
14 IS A LOT OF DRAMA AND THEY DON'T UNDERSTAND WHY
15 YOU GUYS WON'T SETTLE IT. AND IT'S BEEN A LOT OF
16 HARASSMENT.

17 Q. WHAT EXACTLY WOULD YOU PROPOSE BE DONE TO SETTLE
18 THE CASE?

19 A. BEFORE ALL OF THIS STARTED, WE COULD HAVE HAD A
20 MEETING. I COULD HAVE HAD A RESPONSE FROM MR.
21 SCHMIDT ON MY WEBSITE, AND I WOULD HAVE BEEN
22 WILLING TO -- AND THIS IS WHERE YOU'VE TRIED TO
23 CLAIM THAT I WAS ASKING FOR MONEY, FOR CHANGING MY
24 ARTICLE.

25 Q. YOU WERE. YOU WERE ASKING FOR \$500 --

1 A. I DID NOT.

2 Q. -- IF YOU WOULD TAKE THE ARTICLE DOWN.

3 A. I'M ACTUALLY OWED \$500 STILL, BUT -- YOU KNOW, I
4 WAS NEVER PAID ANY INTEREST OR ANY MONEY ON A
5 CHECK THAT WAS 14 WEEKS LATE. BUT WE COULD HAVE
6 SAT DOWN. WE COULD HAVE MADE A RESPONSE ON MY
7 WEBSITE. WE COULD HAVE --

8 Q. DON'T YOU --

9 A. WE COULD HAVE MADE A PUBLIC RESPONSE. HE KNEW
10 THAT DAVE AND I HAVE BEEN ON EBAY A REALLY LONG
11 TIME. WE COULD HAVE GONE BACK IN AND SAID, LOOK
12 WE CAN HELP TRY TO CHANGE ALL THESE THINGS. WE
13 CAN MAKE THIS BETTER.

14 Q. SO YOUR IDEA OF A SOLUTION WOULD HAVE BEEN
15 BASICALLY FOR MR. SCHMIDT TO ALLOW YOU TO REFORM
16 HIS BUSINESS MODEL INTO SOMETHING THAT YOU FIND
17 MORE PALATABLE? IN OTHER WORDS, IF MR. SCHMIDT --

18 A. NO, A BUSINESS MODEL THAT WORKS.

19 Q. -- WOULD TAKE YOUR ADVICE, THEN YOU WOULD CONSIDER
20 THE CASE RESOLVED?

21 A. A MEDIATION IS WHERE YOU SIT DOWN AND YOU SAY
22 HERE'S WHAT WE'LL DO, HERE'S WHAT WE'LL DO.

23 Q. AND OTHER THAN OFFERING FREE ADVICE TO MR.
24 SCHMIDT, THAT HE EVIDENTLY DIDN'T WANT, WHAT --

25 A. OFFER HIM A CHANCE TO RESPOND.

1 Q. AND ISN'T IT THE CASE THAT YOU REGULARLY EDIT OUT
2 DISPARAGING COMMENTS THAT COME INTO YOUR WEBSITE
3 AND ACCUSE PEOPLE OF TROLLING EVERY TIME SOMEBODY
4 SAYS SOMETHING BAD ABOUT YOU ON YOUR OWN WEBSITE?

5 A. BILL O'REILLY DOES THE SAME THING. RUSH LIMBAUGH
6 DOES THE SAME THING.

7 Q. AND YOU'RE PUTTING YOURSELF ON A PAR WITH EITHER
8 ONE OF THOSE TWO, AS FAR AS --

9 A. YES, BECAUSE RUSH LIMBAUGH DIDN'T GRADUATE
10 COLLEGE. HE NEVER WENT TO JOURNALISM SCHOOL. SO,
11 YES, I DO EQUATE MYSELF WITH RUSH LIMBAUGH.

12 Q. AND YOU'RE CONTENDING THAT WHAT RUSH LIMBAUGH DOES
13 IS JOURNALISM?

14 A. YES.

15 Q. YOU INDICATE THAT YOU, "PLAN TO HAVE A GREENVILLE
16 NEWS, WYFF NEWS REPORTER WITH ME TO ANY AND ALL
17 MEETINGS." HAVE YOU CONTACTED THE GREENVILLE NEWS
18 ABOUT COMING TO YOU WITH MEETINGS, OR COMING WITH
19 YOU TO MEETINGS?

20 A. YES, I HAVE.

21 Q. HAVE THEY DECLINED TO COME?

22 A. I DIDN'T HAVE ANY MEETINGS WITH YOU.

23 Q. AND DID THEY SAY LET US KNOW WHEN THE MEETINGS
24 ARE, AND WE'LL MAKE SURE WE HAVE SOMEBODY THERE?

25 A. TIM WALLER SAID HE WAS INTERESTED FOR THE BUYER

1 BEWARE.

2 Q. AND WHEN WAS THAT?

3 A. FEBRUARY, MAYBE. I DON'T KNOW.

4 Q. NEARLY A YEAR AGO?

5 A. YEAH.

6 Q. HOW ABOUT WITH WYFF NEWS? DID ANYBODY EXPRESS
7 INTEREST IN ATTENDING MEETINGS WITH YOU?

8 A. TIM WALLER IS WYFF NEWS.

9 Q. HOW ABOUT THE GREENVILLE NEWS? THAT'S WHAT I WAS
10 ASKING ABOUT FIRST.

11 A. NO, I DIDN'T CONTACT THE GREENVILLE NEWS.

12 Q. YOU'VE ALSO, ISN'T IT TRUE, POSTED INFORMATION ON
13 YOUR WEBSITE CRITICIZING THE BETTER BUSINESS
14 BUREAU FOREBEARING TO PUBLISH CRITICAL REPORTS ON
15 ITS WEBSITE WHEN LITIGATION IS PENDING?

16 A. YES, THAT'S CORRECT. BUT SO HAVE MANY OTHER
17 WEBSITES. RIPOFFREPORT.COM HAS THE SAME THING ON
18 THEIR WEBSITE, THAT THE BETTER BUSINESS BUREAU IS
19 PRETTY MUCH USELESS BECAUSE IT ALLOWS THINGS LIKE
20 WHAT YOU DID.

21 MR. ELWELL:

22 MARK THAT AS NUMBER 7.

23 (EXHIBIT NO. 7 MARKED [DEFENDANT'S RESPONSE TO
24 COMPLAINT]; ATTACHED)

25 EXAMINATION RESUMED BY MR. ELWELL:

1 Q. SO IS IT YOUR CONTENTION THEN, WHEN I WAS ASKED
2 WHAT THE STATUS OF THE DISPUTE WAS, THAT I SHOULD
3 HAVE SAID IT'S IN LITIGATION BUT WE'D STILL LIKE
4 YOU TO PUBLISH HARMFUL INFORMATION ABOUT BIDZIRK
5 ON YOUR WEBSITE?

6 A. NO, I COMPLETELY AGREE WITH WHAT YOU DID.

7 Q. BUT IT'S A SNEAKY LAWYER TRICK, NONETHELESS; IS
8 THAT RIGHT?

9 A. YES, IT IS. YOU ONLY LEARN THAT FROM HAVING TO DO
10 IT BEFORE. SO, I MEAN --

11 Q. HOW'S THAT? YOU HAVE INFORMATION THAT WOULD LEAD
12 YOU TO BELIEVE THAT I HAVE EVER RESPONDED TO A
13 BETTER BUSINESS BUREAU COMPLAINT PREVIOUSLY ON
14 BEHALF OF A CLIENT?

15 A. NO, I DO NOT.

16 Q. SO EVIDENTLY I COULD HAVE LEARNED IT SOME OTHER
17 WAY, IF I LEARNED IT AT ALL.

18 A. SURE YOU COULD HAVE.

19 Q. HOW DO YOU KNOW --

20 A. COULD HAVE LEARNED IT ON LINE FROM A WEBSITE LIKE
21 MINE.

22 Q. HOW DO YOU KNOW THERE WAS ANY SCHEME AT ALL, OTHER
23 THAN JUST TELLING THE TRUTH TO THE PERSON ASKING
24 ME ABOUT THE STATUS OF THE COMPLAINT?

25 A. RIPOFFREPORT.COM SAYS THE EXACT SAME THING. IT'S

1 A SCHEME OF OPPOSING ATTORNEYS TO -- I MEAN IT'S
2 ALMOST VERBATIM FROM THEIR WEBSITE. IT'S A SCHEME
3 OF OPPOSING ATTORNEYS TO REPORT THAT THERE'S
4 LITIGATION SO THAT YOU WON'T GET A BETTER BUSINESS
5 BUREAU REPORT.

6 Q. YOU DON'T HAVE ANY WAY OF KNOWING WHETHER ANYTHING
7 ON RIPOFFREPORT.COM IS CREDIBLE OR ACCURATE, DO
8 YOU, OTHER THAN IT'S ON THE INTERNET?

9 A. I BELIEVE IT TO BE MORE CREDIBLE THAN THE BETTER
10 BUSINESS BUREAU, YES.

11 Q. JUST BASED ON YOUR OPINION?

12 A. YES.

13 Q. ON EXHIBIT 7, CAN YOU TAKE A LOOK AT THAT? THIS
14 IS A PAPER THAT YOU FILED ON APRIL THE 26TH OF
15 THIS YEAR.

16 A. OKAY.

17 Q. IT'S YOUR COUNTER SUIT THAT HAS SINCE BEEN
18 DISMISSED.

19 A. BECAUSE OF LACK OF JURISDICTION ONLY. YOU HAVE A
20 FEDERAL LAWSUIT. I -- THIS IS STATE MATTERS.

21 Q. WHY DID YOU BRING THEM IN THIS COURT, THEN?

22 A. I WASN'T AWARE OF THAT AT THE TIME. I THOUGHT
23 BECAUSE OF YOUR PENDANT ISSUES, WHICH ARE PRETTY
24 MUCH SIMILAR -- BUT ONCE YOUR CASE, IF IT WERE TO
25 BE DISMISSED, YOUR PENDENS WOULD BE DISMISSED AS

1 WELL. YOU'D HAVE TO RE-FILE IN STATE COURT, AND
2 SO WOULD I. AND I COULD FILE ALL OF THESE IN
3 STATE COURT.

4 Q. ON PAGE TWO, THE SECTION THAT BEGINS, "PLAINTIFF
5 HOLDS THESE TRUTHS TO BE SELF-EVIDENT IN THIS
6 MATTER," WHY DID YOU WRITE THAT?

7 A. WHERE IS THAT?

8 Q. IN BOLD UNDER ITEM NUMBER 10. YOUR HOMAGE TO
9 THOMAS JEFFERSON, THAT YOU HOLD THESE TRUTHS TO BE
10 SELF-EVIDENT IN THIS MATTER.

11 A. YEAH.

12 Q. WHY?

13 A. BECAUSE THE TRUTH IS SELF-EVIDENT. JACK WHISPERS
14 WEBSITE IS NOT A COMMERCIAL ENTITY.

15 Q. NOW YOU'VE LOST ON THAT ISSUE ALREADY, RIGHT?

16 A. THAT DOESN'T MEAN THAT I'VE LOST IN THE TRIAL AT
17 ALL. SO, I MEAN, I CAN PROVE THAT IT'S NOT A
18 COMMERCIAL ENTITY. I DID FILE IN THE 2005 TAX
19 YEAR, WHICH I WILL PROVIDE TO YOU IF NECESSARY, AS
20 A NON-PROFIT. I FILED AS A 501-C-3. IN FACT, THE
21 WEBSITE POSTED AN ANNUAL LOSS, THIS IS TRUE,
22 BECAUSE IT DID NOT MATCH HOSTING AND RESEARCH
23 RELATED COSTS INVOLVED WITH A WEBSITE. AND WHEN I
24 SAY THAT, THAT'S SELF-EVIDENT TOO. IT'S OBVIOUS
25 THAT I DON'T MAKE A LOT OF INCOME FROM THAT

1 WEBSITE. I SAY IT ON A REGULAR BASIS.

2 Q. WHEN DID YOU SUBMIT YOUR FORM 1023 TO THE IRS?

3 A. IN APRIL.

4 Q. AND DO YOU HAVE A RESPONSE BACK FROM THE SERVICE
5 INDICATING THAT YOU'VE BEEN ACCEPTED AS A CHARITY,
6 A CHARITABLE ORGANIZATION?

7 A. I'M NOT SURE ABOUT THAT. I'M NOT POSITIVE OF
8 THAT. I'M SURE THAT MY --

9 Q. AND YOU FILED YOUR 1023 IN APRIL, BUT FOR THE 2005
10 TAX YEAR YOU FILED AS A NON-PROFIT CORPORATION?

11 A. YES, I FILED AGAIN FOR THIS TAX YEAR. FOR LAST
12 TAX YEAR, YES.

13 Q. 2005?

14 A. YES.

15 Q. SO YOU'RE SAYING THAT YOU DIDN'T SUBMIT A 1023
16 PRIOR TO THE END OF 2005?

17 A. THAT IS CORRECT. I FILED FOR THE PURPOSE OF THIS
18 CASE.

19 Q. YOU FILED AS A 501-C-3 BEFORE YOU HAD BEEN GRANTED
20 THAT STATUS BY THE SERVICE, THEN?

21 A. WHAT, NOW?

22 Q. DO YOU UNDERSTAND THAT YOU HAVE TO HAVE AN
23 APPROVED 1023 IN WITH THE IRS BEFORE YOU'RE --

24 A. YES, I DO.

25 Q. -- A 501-C-3 CORPORATION?

1 A. YES, I DO.

2 Q. AND YET YOU FILED AS A 501-C-3 FOR YOUR 2005 TAX
3 YEAR PRIOR TO FILING A 1023 TO BECOME A 501-C-3?

4 A. YOU KNOW, THIS IS DETAILS THAT MY ACCOUNTANT HAS
5 GOT. AND, YOU KNOW, I CAN'T ANSWER THAT
6 LEGITIMATELY.

7 Q. BUT WOULD YOU AGREE THAT FILING AS A CHARITY WHEN
8 YOU'RE NOT A CHARITY IS AN IMPORTANT DETAIL
9 THAT --

10 A. YES, AND I --

11 Q. -- MAYBE YOU SHOULD TAKE ATTENTION TO?

12 A. YOU'RE TRYING TO CATCH ME ON A TECHNICALITY, AND I
13 DON'T KNOW THAT. I'M SURE THAT MY ACCOUNTANT HAS
14 HANDLED THAT IN THE BEST POSSIBLE WAY. EVERYTHING
15 THAT I'VE DONE HAS BEEN ABOVE BOARD, AS FAR AS
16 THAT GOES.

17 Q. YOU INDICATE IN THIS PARAGRAPH, "COMMERCIAL ENTITY
18 DEFENSE ONLY APPLIES TO A COMPETING VENTURE OR A
19 DILUTION OF A NAME TO A COMPETING VENTURE."
20 WHAT'S YOUR BASIS FOR THAT STATEMENT?

21 A. WELL, FOR ONE, I AM NOT A COMPETITOR ON MY
22 WEBSITE.

23 Q. WHAT'S YOUR BASIS FOR THE STATEMENT THAT THAT
24 DEFENSE ONLY APPLIES TO --

25 A. THAT'S WHAT I'M TELLING YOU.

1 Q. -- A COMPETING VENTURE?

2 A. I'M TELLING YOU A COMMERCIAL ENTITY -- IT'S A -- I
3 MEAN THAT'S A STATEMENT. THAT'S ALL I CAN TELL
4 YOU. THAT'S THE BEST I CAN TELL YOU.

5 Q. YOU HAVE NO BASIS THAT YOU CAN SUPPLY US WITH FOR
6 THE STATEMENT THAT, "THE COMMERCIAL ENTITY DEFENSE
7 TO TRADE MARK DILUTION ONLY APPLIES TO A COMPETING
8 VENTURE"?

9 A. THAT'S IT.

10 Q. YOU HAVE NO BASIS FOR THAT STATEMENT?

11 A. NO BASIS.

12 Q. THE SAME THING ON THE THIRD PAGE, THE SECOND FULL
13 PARAGRAPH.

14 A. IN A MINUTE CAN WE TAKE A 15-MINUTE BREAK?

15 Q. SURE. WE CAN TAKE ONE NOW, IF YOU'D LIKE.

16 A. LET'S FINISH THIS EXHIBIT.

17 Q. THE SECOND FULL PARAGRAPH. "THE LANHAM ACT
18 SPECIFICALLY GRANTS NEWS AND NEWS COMMENTARY OF
19 ALL FORMS TO HAVE FAIR USE OF TRADEMARKS UNLESS
20 SPECIFICALLY MEANT AS A CAMPAIGN TO DEFAME A
21 COMPETITOR." WHAT'S YOUR BASIS FOR THAT
22 STATEMENT?

23 A. THE LANHAM ACT, WHICH I HAVE RIGHT HERE. "THE
24 FOLLOWING SHALL NOT BE ACTUAL UNDER THIS SECTION."
25 IT DOESN'T EXPLAIN IN ANY WAY, NOT EVEN WITH CASE

1 LAW, ALL FORMS OF NEWS AND NEWS COMMENTARY. NON-
2 COMMERCIAL USE OF THE MARK. WHEN I WAS MAKING
3 THAT STATEMENT, I DON'T THINK THAT THIS HAD BEEN
4 RESOLVED YET. AND I DID NOT HAVE THAT
5 CLARIFICATION FROM THE COURT. AND I BELIEVE THAT
6 ALSO I'M COVERED UNDER FAIR USE OF THE MARK,
7 BECAUSE I'M NOT A COMPETITOR OF HIS. IN OTHER
8 WORDS, I'M NOT AN EBAY RE-SELLER AT
9 JACKWHISPERS.COM.

10 Q. WHERE DOES IT SAY IN THE LANHAM ACT THAT YOU HAVE
11 TO BE A COMPETITOR IN ORDER TO INFRINGE ON ONE'S
12 TRADEMARK?

13 A. I JUST TOLD YOU. THAT'S WHAT -- "FAIR USE OF A
14 FAMOUS MARK BY ANOTHER PERSON IN COMPARATIVE
15 COMMERCIAL ADVERTISING OR PROMOTION TO IDENTIFY
16 THE COMPETING GOODS OR SERVICES OF THE OWNER OF
17 THE FAMOUS MARK."

18 Q. YOU DIDN'T DO ANY OF THOSE THINGS, DID YOU? YOU
19 DIDN'T --

20 A. I DID HAVE FAIR USE. I DID HAVE NON-COMMERCIAL
21 USE OF THE MARK, EVEN THOUGH YOU SAY THE COURT
22 SAID DIFFERENTLY, AND I AM ALL FORMS OF NEWS AND
23 NEWS COMMENTARY.

24 Q. SUBPARAGRAPH "A" STATES THAT THE FAIR USE IS IN
25 COMPARATIVE ADVERTISING, CORRECT? AND YOU DIDN'T

1 ENGAGE IN ANY COMPARATIVE ADVERTISING.

2 A. "OR PROMOTION TO IDENTIFY THE COMPETING GOODS OR
3 SERVICES OF THE OWNER OF A FAMOUS MARK."

4 Q. YOU HAVEN'T DONE THAT. SO THAT DEFENSE WOULDN'T
5 APPLY TO YOU, WOULD IT?

6 A. I DID IDENTIFY THE COMPETING GOODS AND SERVICES OF
7 THE OWNER. ALL EBAY DROP-OFFS ARE HIS
8 COMPETITORS.

9 Q. YOU DIDN'T DO THAT BY USING BIDZIRK'S TRADEMARK,
10 DID YOU? YOU WEREN'T ATTEMPTING TO IDENTIFY A
11 COMPETITOR USING BIDZIRK'S TRADEMARK OR SOME --

12 A. YES.

13 Q. -- INFRINGEMENT OF IT?

14 A. ABSOLUTELY I WAS. I USED THEM TO INDICATE THAT
15 THEY'RE AN EBAY DROP-OFF AND THAT THEY HAVE THE
16 FAST AND FUN WAY TO SELL ON EBAY. AND MY STORY
17 CENTERED AROUND IT WASN'T FAST AND IT WASN'T FUN,
18 JUST LIKE THIS DEPOSITION.

19 Q. SO IF THERE IS A BASIS TO YOUR STATEMENT THAT
20 YOU'RE PERMITTED FAIR USE OF TRADEMARKS UNLESS
21 SPECIFICALLY MEANT AS A CAMPAIGN TO DEFAME A
22 COMPETITOR, YOU FIND THAT IN SUBSECTION "A" OF THE
23 ANTI-DILUTION ACT? THAT'S THE ONLY PLACE THAT YOU
24 FIND THAT?

25 A. OKAY, WHATEVER YOU SAY.

1 Q. I'M ASKING YOU WHAT YOU SAY. IS THERE ANY OTHER
2 BASIS FOR THAT STATEMENT OTHER THAN WHAT YOU THINK
3 YOU READ IN PARAGRAPH "A" THERE?

4 A. I -- IN A -- HERE I HAVE -- I AM IDENTIFYING THE
5 BUSINESS BY THEIR LOGO. THE SLOGAN "FAST AND FUN
6 WAY TO SELL ON EBAY" WAS NOT TRUE IN MY
7 EXPERIENCE. IT IS NOT A MATTER OF WHETHER A BLOG
8 IS A PROPER OUTLET. MY SIDE IS SPECIFICALLY SET
9 UP AS A NEWS -- AS NEWS AND NEWS COMMENTARY. I
10 HAVE BROKEN THREE MAJOR STORIES, AND MY DAILY POST
11 IS ABOUT COMMENTING ON THE NEWS AS APPLIES TO EBAY
12 AND APPLE, WHERE I MAKE MY LIVING SERVING IN THOSE
13 TWO AREAS OF EXPERTISE.

14 Q. WHAT THREE STORIES HAVE YOU BROKEN ON YOUR
15 WEBSITE?

16 A. JACK CAMPBELL GOING OUT OF BUSINESS. BILL PALMER
17 RUNNING A FAKE CONTEST. AND I RECEIVED AN HONOR
18 FOR MY SEVEN THINGS STEVE JOBS MISLED US ABOUT IN
19 THE PAST 20 YEARS.

20 Q. WHAT HONOR WAS THAT?

21 A. I GOT PART OF THE BLOG 100.

22 Q. WHICH IS WHAT, SPECIFICALLY?

23 A. C-NET NEWS HONORS THE TOP WEBSITES, AND I WAS
24 CHOSEN AS ONE OF THE FIVE APPLE WEBSITES.

25 Q. AND THE BILL PALMER CONTEST IS THE INCIDENT

1 SEVERAL MONTHS AGO, WHEN HE FAILED TO SEND YOU A
2 T-SHIRT THAT YOU'D WON?

3 A. THAT'S CORRECT.

4 Q. OR CONTENDED THAT YOU WON. AND THAT WAS AN
5 IMPORTANT STORY THAT YOU BROKE ON YOUR WEBSITE?

6 A. YEAH, I GOT A LOT OF HITS.

7 Q. LATER ON THIS PAGE, YOU SAID, "BIDZIRK IS
8 CONTINUING FRIVOLOUS LITIGATION HOPING FOR A
9 TECHNICALITY OR A SLIP-UP IN DEFENDANT'S PRO SE
10 REPRESENTATION."

11 A. YEAH, LET'S GO OVER THE PAST 20 MINUTES.

12 Q. IS THAT EVEN AN ENGLISH SENTENCE? I MEAN WHAT ARE
13 YOU SAYING THERE?

14 A. DID YOU KNOW THAT THE FIRST FOUR PAGES OF THE "OLD
15 MAN AND THE SEA" ARE ONE SENTENCE? I MEAN WHAT
16 DOES MY GRAMMAR HAVE TO DO WITH THIS CASE?

17 A. I'M JUST ASKING YOU WHAT IT MEANS, WHAT THE
18 SENTENCE MEANS. YOU'RE AN AWARD-WINNING WRITER,
19 EVIDENTLY. SO I PRESUME THAT IF YOU WRITE A
20 SENTENCE, IT'S CORRECTLY CONSTRUCTED.

21 A. WELL, NOT ALL GREAT WRITERS FORM GREAT SENTENCES.
22 THAT'S MY ANSWER TO THAT. I MEAN, IF YOU CAN'T
23 UNDER --

24 Q. WELL, ENDING WITH THE SYLLOGISM NOT ALL GREAT
25 WRITERS ARE GREAT WRITERS, I SUPPOSE I'M FINISHED

1 WITH THAT EXHIBIT AND WE CAN TAKE OUR BREAK.

2 (OFF THE RECORD; BRIEF RECESS)

3 (EXHIBIT NO. 8 MARKED [DEFENDANT'S AMENDMENTS,

4 CLARIFICATIONS AND EXTENSIONS]; ATTACHED)

5 EXAMINATION RESUMED BY MR. ELWELL:

6 Q. MR. SMITH, WE'LL MOVE ALONG. I'VE PUT IN FRONT OF

7 YOU AN EXHIBIT MARKED NUMBER 8, A DOCUMENT YOU

8 FILED ON THE 17TH OF MAY. THIS IS AN AMENDMENT, A

9 SET OF STATEMENTS CONCERNING YOUR COUNTERCLAIMS.

10 A. YES.

11 Q. I WANT TO DIRECT YOUR ATTENTION TO PAGE THREE, THE

12 ITEM NUMBERED 13. IT SAYS, "TAMPERING. NEW

13 EVIDENCE HAS INDICATED TO ME THAT BIDZIRK MAY BE

14 TAMPERING WITH GOOGLE SEARCH ENGINE RESULTS TO

15 AVOID THE ARTICLE IN QUESTION BEING SEEN. A

16 CENSOR BOT FROM CSENTRY.COM HAS BEEN PLACED ON MY

17 ARTICLE IN THE APRIL TO MAY, 2006, TIME FRAME."

18 A. YES.

19 Q. JUST FOR THE RECORD, CAN YOU TELL US WHAT A CENSOR

20 BOT IS?

21 A. A CENSOR BOT IS DEVELOPED TO PULL SEARCH ENGINE

22 RESULTS DOWN. I GOOGLE BIDZIRK OFTEN TO SEE IF

23 THERE IS ANYTHING OTHER ABOUT THEM ON THE

24 INTERNET. AND ONE OF THE PAGE TWO RESULTS ONE

25 TIME WHEN I CAME UP WAS FROM CSENTRY.COM, AND IT

1 HAD THE FIRST PARAGRAPH OF MY ARTICLE ON
2 CSENTRY.COM. CSENTRY.COM MAKES A PRODUCT CALLED
3 SERMA, WHICH IS SEARCH ENGINE REPUTATION
4 MANAGEMENT. I DON'T KNOW WHAT THE "A" -- I FORGET
5 WHAT THE "A" STANDS FOR. BUT I JUST FIND THAT ODD
6 THAT A SEARCH ENGINE REPUTATION MANAGEMENT BOT IS
7 OUT THERE WITH MY STORY. AND SUDDENLY MY STORY
8 WENT FROM NUMBER THREE ON GOOGLE SEARCH TO LIKE
9 PAGE TWO, LIKE AT THE BOTTOM OF PAGE TWO, LIKE THE
10 20TH RESULT ON PAGE TWO. SO IN OTHER WORDS,
11 ALMOST 40 DOWN. AND I JUST FOUND THAT VERY ODD.
12 AND NOT UNTIL I RE-PUBLISHED THE ARTICLE DID IT GO
13 BACK UP TO THE OTHER PAGES. AND EVERY TIME
14 SOMEONE WOULD MENTION BIDZIRK VERSUS SMITH TRIAL
15 IN A LEGAL DISCUSSION ON THE INTERNET, THEIR
16 ARTICLE WOULD BE TOP. AND BEFORE THAT POINT, I
17 WAS IN THE TOP OF THE SEARCH ENGINES. SO I
18 CONTACTED CSENTRY.COM AND THEY WOULD NEITHER
19 CONFIRM NOR DENY WHETHER YOU ARE A CLIENT, BECAUSE
20 THEY DON'T DISCUSS THAT UNLESS THEY'RE SUBPOENAED.

21 Q. AND YOU HAVE NO EVIDENCE OTHER THAN YOU SAID THE
22 PRESENCE OF A CENSOR BOT THAT ANYONE'S TAMPERED
23 WITH YOUR ARTICLE; IS THAT RIGHT?

24 A. YOU DON'T GET ON THE CSENTRY.COM WEBSITE UNLESS
25 SOMEBODY ASKS YOU TO BE THERE.

1 Q. DO YOU KNOW WHO DID IT?

2 A. I DO NOT.

3 Q. BUT YOU INDICATED TO THE COURT THAT YOU THINK
4 BIDZIRK DID IT.

5 A. I BELIEVE SO.

6 Q. WHY DO YOU THINK THAT?

7 A. IT'S SEARCH ENGINE REPUTATION MANAGEMENT. THAT'S
8 WHAT YOU'RE GETTING ON TO ME ABOUT, IS THAT YOU'RE
9 RANKED -- ONE OF THE THINGS YOU'RE GETTING ON TO
10 ME ABOUT IS YOUR RANK IN THE SEARCH ENGINES, THAT
11 WHEN YOU -- I MEAN THAT'S THE ONLY WAY PEOPLE CAN
12 GET TO MY ARTICLE.

13 Q. IT'S TRUE, ISN'T IT, THAT YOU GOOGLE BIDZIRK A LOT
14 BECAUSE YOU WANT TO MAKE SURE THAT YOUR ARTICLE
15 STAYS NEAR THE TOP OF THE RESULTS LIST?

16 A. I CAN'T MAKE MY ARTICLE GO TO THE TOP OF THE
17 RESULTS LIST.

18 Q. BUT YOU HAVE --

19 A. I GOOGLE BIDZIRK TO SEE IF ANYBODY ELSE IS SAYING
20 ANYTHING ABOUT EBAY DROP-OFFS OR BIDZIRK, OR
21 ANYTHING ELSE.

22 Q. BUT WHEN THE ARTICLE FELL IN THE RESULTS LIST FOR
23 WHATEVER REASON, YOU RE-PUBLISHED YOUR ARTICLE SO
24 THAT IT WOULD BE HIGHER UP IN THE RESULTS LIST,
25 CORRECT?

1 A. THAT IS CORRECT.

2 Q. AND YOU'VE RECENTLY, AS LATE AS AUGUST OR SO,
3 POSED AS A THIRD PARTY AND LINKED TO YOUR ARTICLE
4 ON ANOTHER MESSAGE BOARD TO TRY AND GET PEOPLE TO
5 GO TO IT?

6 A. I HAVE NEVER POSED AS A THIRD PARTY ON ANOTHER
7 WEBSITE. CAN YOU TELL ME WHAT THAT INVOLVED?

8 Q. WE'LL GET TO THAT.

9 A. WHATEVER.

10 Q. BUT YOU HAVE NO EVIDENCE THAT BIDZIRK IS
11 RESPONSIBLE FOR PLACING A CENSOR BOT ON YOUR
12 ARTICLE?

13 A. AND I SAID BIDZIRK MAY. SO --

14 Q. AND DO YOU KNOW WHETHER USE OF THE SERMA SOFTWARE
15 PRODUCT IS VIOLATIVE OF ANY LAW?

16 A. YES, GOOGLE DOES NOT ALLOW IT ACCORDING TO GOOGLE
17 POLICY.

18 Q. DOES IT VIOLATE ANY STATUTE THAT YOU'RE AWARE OF?

19 A. GOOGLE DOESN'T ALLOW IT IN THEIR SEARCH ENGINES
20 EVEN THOUGH THAT'S WHAT THEY SPECIFICALLY DESIGNED
21 THE SOFTWARE FOR.

22 Q. GOOGLE'S RULES ARE NOT STATUTES. DO YOU KNOW IF
23 ANY LEGISLATION PROHIBITS USE OF SERMA SOFTWARE TO
24 MANIPULATE SEARCH RESULTS?

25 A. I'M NOT SURE.

1 Q. SO EVEN IF BIDZIRK DID THAT, AND I'M CERTAINLY NOT
2 SAYING THAT IT DID, YOU DON'T KNOW OF ANY LEGAL
3 VIOLATION THAT THAT WOULD REPRESENT?

4 A. I'M NOT SURE, BUT THERE MIGHT BE ONE.

5 Q. BUT YOU DON'T KNOW?

6 A. I DON'T KNOW. BUT REMOVING MY ARTICLE FROM THE
7 SEARCH ENGINE HAS A -- YOU KNOW, HAS AN OBVIOUS
8 ADMISSION OF GUILT ON YOUR PART.

9 Q. HOW IS THAT?

10 A. WELL, IF IT WAS TRUE AND YOU DIDN'T WANT THE -- I
11 MEAN -- I DON'T KNOW. I'VE ANSWERED THAT GOOD
12 ENOUGH.

13 Q. IF I TOLD YOU THAT BIDZIRK HAD NOT DONE THAT, IS
14 THERE ANY OTHER REASONABLE POSSIBILITY THAT
15 SOMEONE ELSE DID THAT?

16 A. THERE CERTAINLY IS A POSSIBILITY. I DON'T KNOW
17 WHY THEY WOULD HAVE, IF THEY WEREN'T BIDZIRK. BUT
18 -- BECAUSE I KNOW IT WASN'T ME, AND I KNOW THAT I
19 COULD POTENTIALLY SUBPOENA OR YOU COULD SUBPOENA
20 CSENTRY.COM AND FIND OUT WHO DID IT.

21 (EXHIBIT NO. 9 MARKED [DEFENDANT'S REQUEST FOR
22 DISMISSAL]; ATTACHED)

23 EXAMINATION RESUMED BY MR. ELWELL:

24 Q. I'LL SHOW YOU EXHIBIT 9, WHICH IS A PAPER THAT YOU
25 FILED ALSO ON MAY 17TH. THIS APPEARS TO BE A

1 STATEMENT THAT I THINK WAS TO ACCOMPANY EXHIBIT 8.
2 YOU WRITE ON HERE, "JACKWHISPERS.COM, EDITOR
3 PHILIP SMITH, REGULARLY POSTS ON THE TOPIC OF EBAY
4 AND THE TECHNOLOGY INDUSTRY. SMITH WAS IN HIS
5 CONSTITUTIONAL RIGHT AND ETHICAL RIGHT TO PUBLISH
6 THE STORY AS STANDS. SMITH HAS WON MULTIPLE
7 AWARDS FOR HIS WRITING."

8 A. UH-HUH (AFFIRMATIVE).

9 Q. WHAT HAVE YOU WON FOR YOUR WRITING?

10 A. I WAS IN THE BLOG 100, AND I DON'T KNOW IF YOU
11 VISITED THAT PAGE. BUT DARING FIREBALL, WHICH IS
12 WIDELY, WIDELY RESPECTED, ALSO GOT THAT HONOR.
13 AND I HAVE WON MULTIPLE AWARDS THROUGHOUT JUNIOR
14 HIGH AND HIGH SCHOOL FOR MY WRITING. I HAVE --

15 Q. TELL US WHAT THOSE ARE.

16 A. I WON THE BEN ROBERTSON ESSAY CONTEST.

17 Q. WHEN WAS THAT?

18 A. SOMETIME IN JUNIOR HIGH. I CAN'T REMEMBER.

19 Q. HOW OLD ARE YOU NOW?

20 A. THIRTY-TWO.

21 Q. SO YOU'RE ATTEMPTING TO TRADE ON A CERTIFICATE
22 THAT YOU WON WHEN YOU WERE 12 OR 13?

23 A. RUSH LIMBAUGH DIDN'T GRADUATE FROM COLLEGE OR HIGH
24 SCHOOL. HE DID GRADUATE FROM HIGH SCHOOL. SORRY.

25 Q. YOU'RE EQUATING YOURSELF WITH RUSH LIMBAUGH?

1 A. YES.

2 Q. HOW SO?

3 A. HE'S OFTEN SEEN AS A DIFFERING OPINION ON SOME
4 THINGS. HE OFTEN GOES INTO DETAIL WITH A LOT OF
5 HIS STORIES. HE IS OFTEN PANNED BY THE PEOPLE
6 THAT DO NOT LIKE HIM. AND --

7 Q. AND A LOT OF PEOPLE DON'T LIKE YOU AND CRITICIZE
8 YOU?

9 A. A LOT OF PEOPLE DON'T LIKE BILL O'REILLY EITHER.

10 Q. BUT IS THAT CORRECT, A LOT OF PEOPLE DON'T LIKE
11 YOU AND CRITICIZE YOU?

12 A. SURE, BUT THEY DO IT TO ALL JOURNALISTS WHO WRITE
13 A STORY ABOUT THEM.

14 Q. OTHER THAN JUNIOR HIGH SCHOOL, WHAT OTHER AWARDS
15 HAVE YOU WON FOR YOUR WRITING? LET ME JUST ASK
16 YOU, HAVE YOU EVER WON AN AWARD FOR YOUR WRITING
17 OTHER THAN BEING LISTED IN THE BLOG 100 SINCE YOU
18 STARTED THE JACK WHISPERS BLOG, OR WHATEVER IT'S
19 PREDECESSOR WAS CALLED?

20 A. NO, BUT I'VE BEEN CONSIDERED FOR THE WEB LOG
21 AWARDS. I MEAN, I HAVE --

22 Q. AND CONSIDERED MEANING THAT YOU --

23 A. THE BLOG 100'S IS A PRETTY PRESTIGIOUS WIN. I
24 MEAN, THAT MEANS THE TOP 100 BLOGS EVER.

25 Q. HOW IS THAT PICKED?

1 A. THROUGH READER SUGGESTIONS, AND THEN THE STAFF OF
2 C-NET REVIEWS THOSE.

3 Q. DO YOU KNOW WHO NOMINATED YOUR BLOG ORIGINALLY?

4 A. I MEAN IT HAS TO COME FROM MULTIPLE NOMINATIONS.

5 Q. YOU PUT YOUR NAME IN THOUGH, DIDN'T YOU?

6 A. I'M SURE I DID. BUT THEY DON'T JUST PUBLISH
7 ANYBODY'S. I MEAN EVERY SINGLE APPLE BLOG OUT
8 THERE PUT THEIR NAME IN. AND IT SAYS MULTIPLE
9 SUBMISSIONS FROM THE SAME IP WILL NOT BE
10 CONSIDERED. SO IT HAD TO BE AROUND THE SAME
11 AMOUNT AS DARING FIREBALL GOT, AND THAT WEBSITE
12 GETS AROUND TWO MILLION HITS A MONTH.

13 Q. DO YOU KNOW HOW MANY HITS YOUR WEBSITE GETS A
14 MONTH?

15 A. YES.

16 Q. BASED ON WHAT?

17 A. GOOGLE IMPRESSIONS AND MY OWN SERVING ACCOUNT. I
18 HAVE A DOMAIN NAME THAT SERVES SOME OF THE
19 PICTURES FOR THAT WEBSITE, AND IT SERVES THE
20 PICTURE ON THE MAIN -- ONE OF THE PICTURES ON THE
21 MAIN PAGE. AND I CAN SEE HOW MANY PEOPLE HAVE
22 LOADED THAT IMAGE.

23 Q. AND WHAT IS THAT DOMAIN?

24 A. WHAT DO YOU MEAN? JACKWHISPERS.COM AND
25 FIXYOURTHINKING.COM.

1 Q. WHEN WERE YOU NAMED IN THE BLOG 100?

2 A. I'M NOT SURE.

3 Q. IT WASN'T 2005?

4 A. I DON'T THINK SO. I THINK IT'S 2004, LATE 2004.

5 Q. AND PRIOR TO THAT, WHEN WAS THE LAST AWARD THAT
6 YOU WON FOR YOUR WRITING? HIGH SCHOOL?

7 A. ON MY WEBSITE? I MEAN, I CAN'T THINK OF ANYTHING
8 ELSE. BUT, YOU KNOW, I PUBLISHED ARTICLES FOR MAC
9 CENTRAL AND MAC MINUTE.

10 Q. WHEN WAS THAT?

11 A. YOU KNOW, SINCE 2000.

12 Q. DID THOSE WIN ANY AWARDS?

13 A. NO, BUT THEY DIDN'T ASK ME NOT TO WRITE FOR THEM
14 ANYMORE.

15 Q. OKAY, I'M JUST TALKING ABOUT THIS STATEMENT YOU
16 MADE IN HERE. "SMITH HAS WON MULTIPLE AWARDS FOR
17 HIS WRITING." I MEAN YOU'RE CREATING THE
18 IMPRESSION THAT YOU ARE AMASSING AWARDS AS WE
19 SPEAK.

20 A. YES, I AM.

21 Q. AND THIS ISN'T MUCH DIFFERENT THAN ME SAYING I WON
22 THE KICK BALL CONTEST IN KINDERGARTEN, SO I SHOULD
23 BE WORKING FOR THE SEAHAWKS KICKING FIELD GOALS,
24 RIGHT?

25 A. OKAY.

1 Q. YOU'RE TRYING TO CREATE AN IMPRESSION BASED ON A
2 RATHER LONG HISTORY THAT DOESN'T NECESSARILY
3 CONTINUE THROUGH THE PRESENT.

4 A. WHATEVER YOU SAY.

5 Q. WELL, I MEAN, WOULD YOU AGREE OR DISAGREE? YOU
6 WON A CERTIFICATE FOR AN ESSAY YOU WROTE WHEN YOU
7 WERE 12. DO YOU THINK THAT'S RELEVANT TO A COURT
8 FILING WHEN --

9 A. SURE IT DOES.

10 Q. -- YOU'RE 32?

11 A. I'VE ALWAYS WANTED TO WRITE, AND I HAVE A HISTORY
12 OF WRITING, AND I DO SO NOW.

13 Q. WHAT DOES THAT HAVE TO DO WITH YOU TELLING A COURT
14 THAT YOU'VE WON MULTIPLE AWARDS FOR YOUR WRITING?
15 LET ME BACK UP. WOULD YOU AGREE THAT CREATES THE
16 IMPRESSION THAT YOU ARE --

17 A. ANYONE IN MY FAMILY, ANY ONE OF MY FRIENDS WOULD
18 AGREE WITH THAT AS WELL.

19 Q. THAT YOU'VE WON MULTIPLE AWARDS FOR YOUR WRITING?

20 A. YES. AND I CAN'T -- I JUST -- I MEAN IT'S NOT
21 COMING TO THE TOP OF MY HEAD, BECAUSE I DON'T LIVE
22 IN THE GLORY OF MY KICK BALL AWARDS, LIKE YOU
23 SAID.

24 Q. BUT YOU'RE LIVING IN THE GLORY OF YOUR JUNIOR HIGH
25 SCHOOL ESSAY CONTEST WIN, EVIDENTLY; IS THAT

1 RIGHT?

2 A. I SUPPOSE SO, MR. ELWELL.

3 Q. YOU INDICATE HERE, "THIS CASE WITH THE LEGAL
4 PAPERWORK AND THE PROCEDURAL BUREAUCRACY ARE AN
5 IMMENSE FINANCIAL AND SOCIAL BURDEN UPON ME."
6 WHAT IS THE FINANCIAL BURDEN THAT YOU'VE SUFFERED
7 FROM THIS CASE?

8 A. I'VE HAD TO PAY SOME CONSULTING FEES. I'VE HAD TO
9 PAY FOR A LOT OF PHONE CALLS. I'VE LOST
10 CONTRACTS. I HAVE LOST -- I LOST MY JOB AT THE
11 COMPUTER CLINIC BASED ON THIS.

12 Q. WHAT HAVE YOU PAID FOR IN CONSULTING FEES?

13 A. ROUGHLY A THOUSAND.

14 Q. AND WHO HAVE YOU PAID THAT TO?

15 A. TO CARPENTER, TO LEGALZOOM.COM, TO SEVERAL -- YOU
16 KNOW, SEVERAL WEBSITES FOR ATTORNEYS' ADVICE.

17 Q. YOU'VE ESSENTIALLY GOTTEN E-MAIL ADVICE FROM
18 ATTORNEYS FOR A FEE?

19 A. YES.

20 Q. HOW MANY TIMES HAVE YOU DONE THAT?

21 A. THREE OR FOUR.

22 Q. SO IS IT FAIR TO SAY THAT EACH OF THE
23 CONSULTATIONS THAT YOU'VE HAD WERE \$200 TO \$250,
24 IF YOU SPENT \$1,000 ON ALL OF IT?

25 A. YES.

1 Q. AND WHY WOULD YOU NOT BUY AN HOUR OF A LOCAL
2 ATTORNEY'S TIME AND GO SIT WITH HIM OR HER IN HIS
3 OR HER OFFICE TO DISCUSS YOUR CASE AS OPPOSED TO
4 SENDING E-MAILS AROUND?

5 A. FOR ONE, THIS ISSUE IS SO COMPLICATED AND
6 CONVOLUTED THAT NO ATTORNEY EVEN REMOTELY
7 UNDERSTANDS IT, UNLESS YOU GET DOWN TO THE PURE
8 PARTS OF THE LAW, LIKE YOUR -- FOR INSTANCE, WHEN
9 YOU DID THAT LIS PENDENS, THAT WAS A -- I'M LOSING
10 MY TRAIN OF THOUGHT. A DEFAMATION OF TITLE. I
11 CAN'T REMEMBER WHAT IT'S CALLED.

12 Q. THIS IS A COMPLEX CASE AND LAWYERS DON'T
13 UNDERSTAND IT, BUT YOU THINK THAT YOU UNDERSTAND
14 IT; IS THAT RIGHT?

15 A. I WAS INVOLVED IN IT. SO I GUESS I UNDERSTAND IT,
16 DON'T I?

17 Q. I HAVEN'T SEEN ANY EVIDENCE OF THAT. BUT I'M
18 ASKING YOU IF YOU THINK YOU UNDERSTAND THE LEGAL
19 PRINCIPLES THAT WORK IN THIS CASE BETTER THAN A
20 LAWYER WOULD THAT YOU CONSULT WITH LOCALLY.

21 A. WELL, APPARENTLY YOU DON'T EVEN UNDERSTAND IT,
22 BECAUSE THEY -- YOU LOST THE INJUNCTION HEARING.
23 AND YOU'RE MOST LIKELY GOING TO LOSE THE FEDERAL
24 APPEAL.

25 Q. WHY DO YOU THINK THAT?

1 A. EVERY ATTORNEY THAT I'VE SPOKEN TO THROUGH E-MAIL,
2 THROUGH -- AND MR. CARPENTER -- HAVE SAID IT'S
3 UNFATHOMABLE WHY YOU'RE CONTINUING THIS ACTION.
4 AND THAT IF, ON THE REMOTE CHANCE THAT YOU DO WIN,
5 WE JUST FILE AN APPEAL AND GET AN ATTORNEY.

6 Q. WHY HAVEN'T YOU DONE THAT YET, THEN?

7 A. BECAUSE I DON'T HAVE THE MONEY.

8 Q. WELL, WHY WILL YOU HAVE THE MONEY IF YOU LOSE AT
9 THE FOURTH CIRCUIT?

10 A. I -- YOU KNOW, I'LL FIND A WAY.

11 Q. WHY HAVEN'T YOU FOUND A WAY NOW?

12 A. I HAVEN'T NEEDED IT.

13 Q. SO THE IMMENSE FINANCIAL BURDEN IS A THOUSAND
14 DOLLARS. IS THERE ANYTHING ELSE?

15 A. THAT'S A LOT TO ME. PLUS I LOST MY JOB AT
16 COMPUTER CLINIC BASED ON THIS ACTION.

17 Q. WERE YOU AN EMPLOYEE THERE?

18 A. I WAS A CONTRACT CUSTOMER FOR ALL THEIR APPLE
19 WORK.

20 Q. HOW MUCH DID YOU EARN WORKING THERE A YEAR?

21 A. ROUGHLY 1,400 TO 1,800 A MONTH.

22 Q. AND YOU LOST THAT JOB BECAUSE OF THIS CASE?

23 A. YES. YOU RECEIVED THAT AFFIDAVIT FROM MIKE LANE
24 AT COMPUTER CLINIC.

25 Q. WHO DRAFTED THAT AFFIDAVIT?

1 A. HE DID.

2 Q. YOU DIDN'T PRESENT IT TO HIM AND SAY, "PLEASE TAKE
3 A LOOK AT THIS AND SIGN IT"?

4 A. NO.

5 Q. AND DO YOU KNOW WHY YOU DIDN'T HAVE YOUR CONTRACT
6 RENEWED?

7 A. ONE OF THE THINGS IS THEY WERE CONCERNED ABOUT
8 THIS LAWSUIT AND THIS LITIGATION. ALSO BECAUSE
9 HERLONG LAW FIRM WAS INVOLVED IN AN OPPOSING CASE
10 AGAINST THEM AS WELL.

11 Q. WHAT DOES THAT HAVE TO DO WITH ANYTHING?

12 A. THE HERLONG LAW FIRM WAS INVOLVED IN ANOTHER CASE
13 THAT THEY WERE CURRENTLY TRYING, AND THEY THOUGHT
14 THAT THIS MIGHT HAVE AN IMPACT ON THEM AS FAR AS
15 THEIR CASE WENT.

16 Q. DO YOU KNOW WHY THAT IS?

17 A. I MEAN THAT'S WHAT MIKE LANE SAID, AND THAT'S WHAT
18 MIKE'S ATTORNEY SAID.

19 Q. BUT YOU DON'T KNOW WHAT THE CONNECTION WOULD BE OR
20 COULD BE?

21 A. THEIR CASE WAS A SIMILAR ISSUE. THEY HAVE A
22 PATENT ON A PIECE OF SOFTWARE, AND THE HERLONG LAW
23 FIRM IS REPRESENTING THE PEOPLE WHO ARE SUING THEM
24 OVER IT.

25 Q. DO YOU KNOW WHAT THE STATUS OF THAT CASE IS?

1 A. I BELIEVE IT'S BEEN SETTLED AT THIS POINT, BUT IT
2 WAS JUST RECENTLY. I'M NOT SURE. I REALLY DON'T
3 KNOW. I BELIEVE IT'S BEEN SETTLED.

4 Q. AND SO YOU DON'T ACTUALLY KNOW WHAT ABOUT THAT
5 CASE WOULD HAVE IMPACTED THIS CASE, OR VICE-VERSA?

6 A. THE DAILY DRAG THAT THIS HAD ON ME OF HAVING TO
7 RESPOND TO ALL THIS STUFF, HAVING TO CONCENTRATE
8 ON ALL THIS STUFF, HAVING TO DO ALL THE RESEARCH
9 FOR THIS STUFF TOOK A DRAG ON MY CONTRACT WORK
10 WITH THEM. AND THEY COULD NO LONGER RELY ON ME AS
11 A FULL-TIME CONTRACTOR.

12 Q. YOU HAVEN'T RESPONDED TO EVERYTHING THAT'S BEEN
13 SERVED TO YOU, RIGHT?

14 A. I BELIEVE I RESPONDED TO THE BEST OF MY ABILITY.

15 Q. AND HAVE YOU CITED ANY CASES AT ALL IN ANYTHING
16 THAT YOU'VE FILED?

17 A. YES, TUCKER MAX.

18 Q. IS THAT A REPORTED CASE, TO YOUR KNOWLEDGE?

19 A. YES.

20 Q. AND WHAT RESEARCH DID YOU HAVE TO DO TO FIND THE
21 NAME OF THAT CASE, OR ANYTHING ABOUT THAT?

22 A. IT WAS PRETTY POPULAR ON THE INTERNET.

23 Q. SO YOU KNEW ABOUT IT ALREADY. I'M TRYING TO GET
24 AT WHAT'S ALL THIS RESEARCH THAT YOU'VE HAD TO DO
25 THAT BASICALLY DOMINATED YOUR ATTENTION AND CAUSED

1 YOU TO LOSE YOUR JOB.

2 A. WELL, YOU'VE SENT ME -- I MEAN, I DIDN'T BRING THE
3 FOUR FILE FOLDERS FULL OF STUFF THAT YOU'VE SENT
4 ME ALONE, AND THEN THE COURT SENDS ME A LOT OF
5 INFORMATION AS WELL. THEY USUALLY SEND REDUNDANT
6 COPIES OF WHATEVER YOU'VE SENT THEM BECAUSE I'M
7 PRO SE. AND SO, YOU KNOW, IT TAKES A WHILE TO GO
8 OVER THAT PAPERWORK. AND I HAVE TO GOOGLE CERTAIN
9 TERMS AND LOOK THAT UP. AND I HAVE TO MAKE PHONE
10 CALLS AND THINGS LIKE THAT. SO IT TAKES A LOT OF
11 MY TIME.

12 Q. WHAT KIND OF PHONE CALLS?

13 A. TO FRIENDS, FAMILY.

14 Q. HOW OFTEN? HOW MANY HOURS A DAY DO YOU SPEND ON
15 THIS CASE?

16 A. ONE TO TWO.

17 Q. AND WHAT ARE YOU DOING DURING ONE TO TWO HOURS A
18 DAY?

19 A. I'M PREPARING MY RESPONSES.

20 Q. WHEN IS THE LAST TIME YOU FILED A RESPONSE TO
21 ANYTHING?

22 A. THE LAST TIME YOU GOT PAPERWORK.

23 Q. SEVERAL MONTHS AGO?

24 A. NO, YOU GOT SOME PAPERWORK AT THE END OF NOVEMBER.

25 Q. WHICH WAS WHAT?

1 A. I CAN'T EVEN REMEMBER NOW. SORRY.

2 Q. THE LAST PARAGRAPH OF THIS EXHIBIT, NUMBER 9, YOU
3 ASK THAT YOU BE, "GRANTED AN INJUNCTION AGAINST
4 BIDZIRK FOR CONTACTING OTHER NON-RELEVANT SUBJECTS
5 OF ARTICLES I HAVE DONE AND CONTINUED TO POST ON
6 MY WEBSITE." WHO ARE THESE NON-RELEVANT SUBJECTS
7 OF ARTICLES?

8 A. BILL PALMER AND JACK CAMPBELL. THEY ARE BOTH
9 HIGHLY MENTALLY UNSTABLE PERSONS.

10 Q. WHY DO YOU SAY THAT?

11 A. JACK CAMPBELL HAS BEEN TREATED FOR CLINICAL
12 SCHIZOPHRENIA. AND, I MEAN, FOR YOU TO JEOPARDIZE
13 THE RELATIONSHIP THAT I HAVE WITH HIM, WHICH IS A
14 VERY, VERY UNIQUE ONE, HAS CAUSED ME A LOT OF
15 STRESS WITH HIM. BECAUSE NOW, YOU KNOW, HE'S --
16 I'M SURE HE'S JUST LIKE GRINNING AND THINKING,
17 WOW, THAT'S GREAT WHEN HE'S, YOU KNOW, TELLING ME
18 OTHERWISE. BILL PALMER IS --

19 Q. I THOUGHT YOU SAID HE WAS A GOOD FRIEND OF YOURS,
20 JACK CAMPBELL.

21 A. HE IS A GOOD FRIEND OF MINE.

22 Q. BUT YOU THINK HE'S GRINNING THAT SOME TROUBLE'S
23 BEING CAUSED YOU, OR HE THINK YOU'RE BEING CAUSED
24 TROUBLE?

25 A. LEX LUTHOR WAS A GOOD FRIEND OF SUPERMAN.

1 Q. LEX LUTHOR'S A COMIC BOOK CHARACTER.

2 A. OKAY.

3 Q. SO YOU CONSIDER HIM --

4 A. PEOPLE HAVE A LOT OF RELATIONSHIPS LIKE THAT.

5 STEVE JOBS AND BILL GATES. BILL GATES HATES STEVE

6 JOBS. I MEAN IT'S A KNOWN FACT. IT'S A KNOWN

7 FACT THAT THEY HATE EACH OTHER, BUT THEY GET

8 ALONG. THEY GO TO EACH OTHER'S SUMMER HOMES

9 TOGETHER TO TALK. THERE'S A REAL LIVE CASE FOR

10 YOU.

11 Q. SO YOU AND JACK CAMPBELL ARE IN A RELATIONSHIP

12 WHERE YOU HATE EACH OTHER, BUT YOU'RE FRIENDS?

13 A. I WOULDN'T SAY I HATE HIM.

14 Q. BUT HE HATES YOU, AS FAR AS YOU KNOW?

15 A. I WOULDN'T SAY HE HATES ME. I SAID IT WAS

16 ADVERSARIAL.

17 Q. BUT HE GRINS IF HE THINKS YOU'RE BEING CAUSED SOME

18 KIND OF PAIN?

19 A. SURE. SURE, AND I'M SURE BILL PALMER DOES TOO.

20 Q. AND WHY DO YOU THINK BILL PALMER IS MENTALLY

21 UNSTABLE?

22 A. HE'S TALKED ABOUT ALL OVER THE INTERNET AS WELL.

23 AND HE'S A PATHOLOGICAL LIAR.

24 Q. BILL CAMPBELL IS?

25 A. BILL PALMER IS.

1 Q. BILL PALMER. EXCUSE ME.

2 A. BILL PALMER IS A PATHOLOGICAL LIAR. I MEAN THAT'S
3 A PROVEN FACT.

4 Q. DOES ANYBODY ON THE INTERNET, THAT YOU'RE AWARE
5 OF, CONSIDER YOU TO BE MENTALLY UNSTABLE OR A
6 LIAR, OR PSYCHOLOGICALLY --

7 A. I'M SURE PEOPLE POST THAT, BUT THEY POST THAT
8 ABOUT --

9 Q. -- COMPROMISED?

10 A. -- BILL O'REILLY AND RUSH LIMBAUGH, TOO.

11 Q. YOU AND BILL AND RUSH ARE THREE OF A KIND, AREN'T
12 YOU?

13 A. I LIKE THEM BOTH, GOOD GUYS.

14 Q. "THE NICHE I COVER IN MY REPORTING TENDS TO LEAN
15 TOWARDS REPORTING ON SOME OF THE LESS MENTALLY
16 STABLE PERSONS IN THE TECH INDUSTRY."

17 A. YES.

18 Q. IS THAT ANYBODY OTHER THAN JACK CAMPBELL AND BILL
19 PALMER?

20 A. YOU KNOW, DAVE WEGENER FROM WEGENER MEDIA.

21 Q. AND YOU FILED A BBB COMPLAINT AGAINST HIS COMPANY?

22 A. YES, THAT'S CORRECT.

23 Q. BECAUSE YOU THINK HE TOOK \$400 FROM YOU, AND IN
24 YOUR VIEW THAT MAKES HIM MENTALLY UNSTABLE?

25 A. WELL, HE -- I MEAN IF YOU LOOK AT HIS BETTER

1 BUSINESS BUREAU REPORT, IT SAYS -- AND YOU LOOK AT
2 MULTIPLE POSTS ALL OVER THE INTERNET, THEY SAY
3 THAT HE JUST LIES TO YOU AND THAT HE SAYS ONE
4 THING AND THEN DOESN'T DO IT.

5 Q. WHAT'S YOUR OPINION OF MR. SCHMIDT'S MENTAL
6 STABILITY?

7 A. IT WASN'T TOO GREAT DURING OUR LAST MEETING WHERE
8 HE GOT UP AND PUT HIS FINGER IN MY FACE AND SAID,
9 "I'LL SUE YOU."

10 Q. ARE YOU ANY SORT OF AUTHORITY ON MENTAL HEALTH
11 ISSUES?

12 A. NO.

13 Q. YOU DON'T HAVE ANY EDUCATION THAT WOULD ALLOW YOU
14 TO IDENTIFY OR DIAGNOSE MENTAL DISABILITY?

15 A. NO, SIR.

16 Q. HAS YOUR OPINION OF MR. SCHMIDT'S MENTAL STABILITY
17 CHANGED DURING THE PENDENCY OF THIS CASE?

18 A. I DON'T THINK HE'S VERY MENTALLY STABLE.

19 Q. WHY IS THAT?

20 A. YOU KNOW, NO ONE IN THEIR RIGHT MIND WOULD
21 CONTINUE TO BATTER ME LIKE THIS KNOWING THAT
22 THEY'RE NOT GOING TO GET ANYTHING OUT OF IT.

23 Q. WOULD YOU AGREE THAT REASONABLE PEOPLE CAN --

24 A. AND NO ONE WOULD PAY AN ATTORNEY THE FEES THAT
25 THEY'VE GIVEN YOU AND JUST -- I MEAN, I JUST DON'T

1 UNDERSTAND IT. NOT A CHRISTIAN WOULD, I DON'T
2 THINK.

3 Q. JUST BECAUSE YOU DON'T UNDERSTAND IT DOESN'T MEAN
4 IT'S THE PRODUCT OF A MENTALLY UNSTABLE MIND, DOES
5 IT?

6 A. YOU KNOW, I DON'T KNOW. I HAVEN'T INTERVIEWED
7 ANYBODY ELSE. I PROBABLY COULD, THOUGH.

8 Q. AND YOU SAY, "I'M BEING DEFAMED OVER BIDZIRK'S
9 ACTIONS IN SEVERAL FORMS AROUND THE INTERNET BY
10 THOSE WHO OPPOSE MY EDITORIALS." WHERE ARE YOU
11 BEING DEFAMED IN THE INTERNET?

12 A. YOU KNOW, THOSE COMMENTS THAT YOU MENTION ON MY
13 WEBSITE. YOU KNOW, WHENEVER I POST ABOUT THIS,
14 THEY SAY, "HA, HA, HA. YOU'RE GETTING SUED. GOOD
15 LUCK."

16 Q. BUT YOU JUST ERASE THOSE AND CALL THEM TROLLS,
17 RIGHT?

18 A. NOT NECESSARILY. SOMETIMES I DO. SOMETIMES I
19 DON'T. IT DEPENDS ON WHETHER THEY'RE WORTHY OF
20 COMMENTING ON. AND I'M NOT SO SURE IF THAT'S NOT
21 YOU AND TY, OR JILL OR SOMEBODY, POSTING THOSE
22 ANYWAY.

23 Q. AND AGAIN YOU HAVE NO EVIDENCE WHATSOEVER THAT
24 ANYBODY HAS --

25 A. WELL, I COULD BE ABLE TO COMPARE IP ADDRESSES.

1 Q. HAVE YOU DONE THAT?

2 A. NO, BUT I MIGHT.

3 Q. AND SO DON'T YOU THINK THAT PERHAPS YOU SHOULD DO
4 THAT, AND FIND OUT THAT IT IS SOMEONE THAT YOU
5 KNOW POSTING UNDER A PARTICULAR NAME LIKE
6 ANONYMOUS?

7 A. I DON'T CARE. I DON'T CARE WHO'S SAYING THAT.

8 Q. THEN WHY WOULD YOU DO IT?

9 A. BECAUSE THEY'RE TROLLS, JUST LIKE YOU SAID. BILL
10 O'REILLY DOESN'T RESPOND TO PEOPLE LIKE THAT.
11 RUSH LIMBAUGH CUTS PEOPLE OFF THAT START DOING
12 THAT.

13 Q. DON'T YOU THINK BILL O'REILLY PROBABLY GETS MANY
14 THOUSANDS OF TIMES AS MANY COMMENTS AS YOU DO A
15 DAY, AND MAYBE HE CAN'T GET TO ALL OF THEM?

16 A. I GET A LOT OF POSITIVE COMMENTS. I GET A LOT OF
17 POSITIVE COMMENTS ON MY WEBSITE.

18 Q. WELL, I LOOK AT YOUR WEBSITE EVERY DAY TO SEE WHO
19 ELSE YOU MIGHT BE DEFAMING, AND MANY OF YOUR
20 STORIES HAVE ZERO COMMENTS ON THEM. AND IF
21 THERE'S EVER EVEN A NUMBER OF COMMENTS, IT'S
22 BECAUSE YOU ALWAYS COMMENT BACK TO SOMEBODY WHO'S
23 COMMENTED; ISN'T THAT RIGHT?

24 A. LOOK AT MY STORY, THE SEVEN THINGS THAT STEVE JOBS
25 HAS MISLED US ABOUT. THERE ARE 48 COMMENTS.

1 Q. ABOUT THREE MONTHS AGO?

2 A. YES. ALSO I DID A STORY ABOUT TERRI SCHIAVO TWO
3 YEARS AGO, AND THAT STORY HAD ALMOST 70 COMMENTS
4 ON IT.

5 Q. YOU'D AGREE THAT BOTH OF THOSE ARE ABERRANT
6 COMPARED TO THE AMOUNT OF COMMENTARY THAT YOU
7 NORMALLY RECEIVE?

8 A. I'M NOT CLAIMING THAT EVERY STORY THAT I WRITE IS
9 SOME MASTERPIECE. AND IT'S OBVIOUS THAT I DO
10 FEATURE STORES ON THE TUNE OF ONCE A MONTH. BUT I
11 HAVEN'T FELT VERY WELL IN THE PAST COUPLE MONTHS,
12 SO I HAVEN'T BEEN DOING THAT ON A REGULAR BASIS.

13 Q. IS THERE ANY OTHER DEFAMATION ON THE INTERNET THAT
14 YOU CLAIM YOU'VE BEEN A VICTIM OF?

15 A. IT'S PRETTY EMBARRASSING THAT, YOU KNOW, ALL THE
16 TECHNOLOGY LAW WEBSITES ARE TALKING ABOUT ME.

17 Q. WHY IS THAT?

18 A. I JUST THINK IT'S EMBARRASSING.

19 Q. WELL, ACCORDING TO YOU --

20 A. BECAUSE THEY CONTACT ME, BECAUSE THEY FIGURE OUT
21 WHO I AM, BECAUSE MOST OF THOSE ARE ATTORNEYS WHO
22 RUN THOSE. AND THEY ASK ME ABOUT THE CASE AND
23 EVERYTHING ELSE.

24 Q. AND WHY ARE YOU EMBARRASSED BY THAT? IF IT'S
25 SOMETHING THAT WOULD MAKE ME, FOR INSTANCE, INTO A

1 LAUGHINGSTOCK AND YOU OBVIOUSLY ABLE TO DISCUSS ON
2 YOUR --

3 A. I DON'T ENJOY MAKING YOU A LAUGHINGSTOCK. I DON'T
4 ENJOY --

5 Q. WELL, YOU HAVEN'T DONE THAT.

6 A. NOBODY SEEMS TO UNDERSTAND AN ATTORNEY THAT WOULD
7 REPRESENT THIS CASE. SO I DON'T SEE WHY YOU'RE
8 NOT. SO -- AND BY THE WAY, THIS ONE THAT YOU
9 TALKED ABOUT HERE, I HAVE RECEIVED -- I HAVE
10 ALREADY RECEIVED E-MAIL THREATS. I HAVE THAT --

11 Q. WHOSE THREATENED YOU?

12 A. -- BILL PALMER THREATENED ME WITH LITIGATION IF
13 THIS COMES THROUGH.

14 Q. IF WHAT COMES THROUGH?

15 A. YOUR SUIT.

16 Q. WHAT DOES THAT MEAN?

17 A. IN OTHER WORDS, IF YOUR SUIT GETS -- IF YOU WIN A
18 JUDGMENT AGAINST ME, HE SAID, "WELL, I'LL FILE
19 TOO."

20 Q. WHAT WOULD HE BE FILING ABOUT?

21 A. ABOUT WHAT I WROTE ABOUT HIM ABOUT HIS ILLEGIT
22 CONTEST.

23 (EXHIBIT NO. 10 MARKED [7/7/06 POSTING FROM
24 RIPOFFREPORT.COM]; ATTACHED)

25 EXAMINATION RESUMED BY MR. ELWELL:

1 Q. I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 10. THIS
2 IS A PRINT-OFF OF A PAGE FROM THE RIPOFFREPORT.COM
3 WEBSITE. CAN YOU TAKE A LOOK AT THIS COMPLAINT
4 AND TELL ME IF THIS IS A COMPLAINT THAT YOU
5 POSTED?

6 A. YES.

7 Q. YOU INDICATE HERE THAT YOU TOOK \$45,000 WORTH OF
8 TECHNOLOGY INVENTORY TO BIDZIRK.

9 A. YES.

10 Q. WHO DID THIS APPRAISAL?

11 A. A TECHNOLOGY APPRAISER FROM FLUOR DANIEL. I CAN'T
12 REMEMBER HIS NAME. I HAVE THAT DOCUMENT, THOUGH.

13 Q. WHEN WAS THIS APPRAISAL DONE?

14 A. I WANT TO SAY DECEMBER OF 2004.

15 Q. WAS THERE A FEE PAID FOR THE APPRAISAL?

16 A. NO. HE WAS A FRIEND OF FRANK WATTS, THE OWNER OF
17 THE INVENTORY.

18 Q. DID THE PERSON GO AND LOOK AT ANY OF THE
19 INVENTORY, OR DID HE JUST LOOK AT A LIST OF WHAT
20 WAS --

21 A. NO, HE WENT -- HE THOROUGHLY WENT THROUGH EACH
22 WAREHOUSE.

23 Q. AND YOU DON'T KNOW THE PERSON'S NAME?

24 A. I CAN'T REMEMBER IT, NO.

25 Q. DO YOU KNOW, FROM YOUR EXPERIENCE, HOW MANY

1 REGISTERED USERS EBAY HAS?

2 A. PROBABLY A HUNDRED MILLION. I DON'T KNOW.

3 Q. IF WE ASSUME IT'S A HUNDRED MILLION, WOULD YOU
4 AGREE THAT IF A HUNDRED MILLION PEOPLE SAY THAT AN
5 ITEM IS WORTH A CERTAIN PRICE, THAT THAT'S A
6 PRETTY GOOD GAUGE OF WHAT IT REALLY IS WORTH IN
7 THE MARKET? I MEAN DO A HUNDRED MILLION PEOPLE
8 MAKE ITS OWN MARKET?

9 A. NO, I DISAGREE, BECAUSE I -- IN MY ARTICLE I GIVE
10 A SPECIFIC EXAMPLE WHERE THEY LISTED A STAR WARS
11 FIGURE, AND I LISTED THE IDENTICAL STAR WARS
12 FIGURE. I GOT DOUBLE WHAT THEY GOT. I CAN
13 TYPICALLY GET MORE FOR AN AUCTION THAN THE AVERAGE
14 PERSON ON EBAY. SO I DO SAY THAT EBAY IS THE
15 GAUGE OF WHAT AN ITEM IS WORTH, BUT SOME PEOPLE
16 CAN GET MORE FOR ITEMS THAN OTHERS. AND THEIR OWN
17 -- YOUR OWN ADVERTISING FOR BIDZIRK SAYS, "WE GET
18 TOP DOLLAR FOR YOUR ITEMS ON EBAY." AND YOU DON'T
19 GET TOP DOLLAR. I CAN GET MORE THAN YOU, AND I'M
20 SUPPOSEDLY THIS AMATEUR EBAYER.

21 Q. IF YOU CAN DO IT BETTER THAN BIDZIRK, WHY DIDN'T
22 YOU JUST DO IT?

23 A. IT WAS TOO MUCH INVENTORY. I EXPLAINED THAT IN
24 THE ARTICLE.

25 Q. BUT EVEN THOUGH IT WAS TOO MUCH FOR YOU, YOU WOULD

1 EXPECT SOMEBODY ELSE TO TAKE THE SAME INVENTORY
2 AND GET THE SAME RESULTS THAT YOU WOULD EXPECT TO
3 GET FOR YOURSELF?

4 A. WITH A STAFF OF SEVEN, YES, CERTAINLY.

5 Q. AND DO YOU KNOW WHETHER, AMONG ALL OF THE SAME
6 STAR WARS FIGURE THAT WAS SOLD ON EBAY, WHETHER
7 THE PRICE YOU GOT WAS A LOT HIGHER THAN THE
8 AVERAGE OF ALL THOSE SALES?

9 A. YES.

10 Q. YOU DO KNOW THAT?

11 A. YES.

12 Q. SO IT WOULD BE THE CASE THEN, THAT BIDZIRK GOT
13 CLOSER TO THE AVERAGE GENERALLY IN THE MARKET, AND
14 PERHAPS THAT THE AMOUNT THAT YOU GOT WAS
15 ABERRANTLY HIGH?

16 A. OH, NO. NO, THAT'S NOT WHAT I MEANT BY THAT.
17 THEY GOT WELL BELOW AVERAGE FOR THAT PARTICULAR
18 FIGURE. THEY GOT, I BELIEVE, \$38 AND SOME CENTS.
19 AND THE AVERAGE WAS GOING FOR AROUND 60, AND I GOT
20 76.

21 Q. AND DO YOU KNOW IF ALL THE CONDITIONS CONCERNING
22 THAT AUCTION WERE OTHERWISE EQUAL?

23 A. I LET THEM LIST ONE AND I LISTED ONE.

24 Q. AT THE SAME TIME?

25 A. YES, AND SAME WITH THE POWERBOOK RAM THAT I

1 MENTION IN THE STORY.

2 Q. AND DO YOU KNOW IF THERE ARE OTHER FACTORS THAT
3 MAY HAVE IMPACTED BIDZIRK'S PRICE ON THAT AUCTION?

4 A. I MEAN -- I DON'T KNOW WHAT FACTORED IN.

5 (EXHIBIT NO. 11 MARKED [COVER SHEET FOR AFFIDAVITS];
6 ATTACHED)

7 EXAMINATION RESUMED BY MR. ELWELL:

8 Q. THE REPORTER IS SHOWING YOU WHAT WE'VE MARKED AS
9 11. THIS WAS FILED ON JUNE 21ST BY YOU, AND
10 INDICATES -- THIS IS, I GUESS, A COVER SHEET FOR
11 SOME AFFIDAVITS THAT YOU FILED ON THE SAME DAY.

12 A. YES, THEY ASKED ME TO DO THAT.

13 Q. WHO ASKED YOU TO DO THAT?

14 A. THE CLERK OF COURT, FOR JUDGE CATO.

15 Q. IN THE THIRD PARAGRAPH YOU SAY, "I AM TRYING TO
16 APPEASE THE COURT WITH MY HONEST AND MOST SINCERE
17 INTENTION OF WHAT IS DOING RIGHT AND WHAT IS
18 REQUIRED OF ME BY LAW."

19 A. UH-HUH (AFFIRMATIVE).

20 Q. WHAT DOES THAT MEAN?

21 A. I'M TRYING TO MAKE THE COURT HAPPY BY GIVING AN
22 HONEST EFFORT TO THIS BEING PRO SE. I MEAN, I
23 JUST -- I DON'T HAVE ANY MONEY, AND THIS HAS BEEN
24 VERY DEPRESSING FOR ME. AND IT'S BEEN HARD TO DO
25 ALL THIS AND UNDERSTAND WHAT I'VE DONE WRONG,

1 BECAUSE I DIDN'T DO ANYTHING WRONG.

2 Q. YOU SAY ALSO, "I BEG OF THE COURT TO TAKE SPECIAL
3 CONSIDERATION OF THIS FACT. I ASK THAT THE COURT
4 MAKE ALL COMMUNICATION TO ME IN LAYMEN."

5 A. UH-HUH (AFFIRMATIVE).

6 Q. LIKE AS USING THAT LIKE IT'S A LANGUAGE, LAYMEN?

7 A. YEAH, THAT'S A TERM FOR LAYMEN TERMINOLOGY.

8 BECAUSE YOU YOURSELF, I MEAN, YOU WORD EVERYTHING
9 SO COMPLICATED THAT NOBODY UNDERSTANDS IT. AND SO
10 DOES THE COURT. THE COURT --

11 Q. WHY DO YOU THINK THAT?

12 A. I MEAN THERE'S ATTORNEY SPEAK AND THERE'S NORMAL
13 PEOPLE SPEAK. I MEAN THAT'S HOW THE SYSTEM WORKS,
14 I SUPPOSE.

15 Q. IS WHAT I'M WRITING BEYOND YOUR UNDERSTANDING,
16 THEN? IS THAT WHAT YOU MEAN?

17 A. IT'S NOT BEYOND MY UNDERSTANDING, BUT A LOT OF IT
18 IS INCOMPREHENSIBLE FOR THE CONNECTIONS THAT YOU
19 TRY TO MAKE. AND --

20 Q. WHAT'S AN EXAMPLE OF THAT?

21 A. LIKE YOU HAD A STARBUCKS COPYRIGHT INFRINGEMENT
22 CASE THAT DOESN'T EVEN REMOTELY APPLY.

23 Q. DID YOU READ THE CASE?

24 A. YES, I DID. SOMEBODY NAMING THEIR BUSINESS
25 SOMETHING CLOSE TO STARBUCKS, LIKE STANBUCKS

1 (PHONETIC), HAS NOTHING TO DO WITH WHETHER I NAMED
2 MY WEBSITE FIX YOUR THINKING, AND THEY HAVE THEIR
3 WEBSITE AS BIDZIRK. THAT HAS NOTHING TO DO WITH
4 ONE OR THE OTHER.

5 Q. DO YOU THINK MAYBE IT'S POSSIBLE THAT YOU DON'T
6 UNDERSTAND THE APPLICABILITY OF THAT CASE, AND
7 PERHAPS I DO, OR THAT THE COURT DOES?

8 A. OKAY. OBVIOUSLY THEY DIDN'T. THEY'VE DISMISSED
9 IT. SO, I MEAN, THEY --

10 Q. WHAT'S BEEN DISMISSED BESIDES YOUR COUNTERCLAIMS?

11 A. THE INJUNCTION WAS NOT GRANTED TO YOU, AND SO YOU
12 HAD TO APPEAL. SO OBVIOUSLY NONE OF THIS STUFF
13 HAS MADE SENSE TO THE COURT SO FAR.

14 Q. WHY DOES THE FACT THAT THE COURT DIDN'T GRANT AN
15 INJUNCTION INDICATE THAT IT DIDN'T UNDERSTAND
16 SOMETHING?

17 A. I DON'T KNOW.

18 Q. WHEN DID YOU ASK MR. LANE TO GIVE THIS AFFIDAVIT?
19 THIS IS ACTUALLY JUST A LETTER.

20 A. WHEN IT'S DATED. A COUPLE DAYS BEFORE IT WAS
21 DATED.

22 Q. JUNE 2, 2006.

23 MR. ELWELL:

24 LET'S GO AHEAD AND MARK THIS AS 12.

25 (EXHIBIT NO. 12 MARKED [COVER SHEET AND LANE

1 AFFIDAVIT]; ATTACHED)

2 EXAMINATION RESUMED BY MR. ELWELL:

3 Q. MR. SMITH, YOU CAN TAKE A LOOK AT WHAT WE'VE
4 MARKED AS EXHIBIT 12. THIS IS MR. LANE'S JUNE 2,
5 2006, LETTER.

6 A. OKAY.

7 Q. YOU ASKED MR. LANE TO GIVE YOU THIS LETTER JUST
8 IMMEDIATELY PRIOR TO JUNE THE 2ND?

9 A. WITH -- YOU KNOW, WITHIN A WEEK PROBABLY.

10 Q. AND WHAT DID YOU ASK HIM, SPECIFICALLY?

11 A. I SAID, "MIKE, COULD YOU GIVE ME THE REASONS WHY
12 YOU CHOSE TO RESOLVE THE RELATIONSHIP BETWEEN US
13 IN RELATIONSHIP TO THE BIDZIRK TRIAL?"

14 Q. AND HE SAYS IN THE SECOND PARAGRAPH THAT YOUR
15 COMPANY, ADZOOX, AND COMPUTER CLINIC HAD DISSOLVED
16 THEIR WORKING RELATIONSHIP, AND THAT THIS ACTION
17 WAS DUE TO SEVERAL FACTORS, NOT THE LEAST OF WHICH
18 WAS THE HIGH-PROFILE LITIGATION IN WHICH ADZOOX
19 WAS INVOLVED. DO YOU KNOW WHAT THE OTHER FACTORS
20 ARE THAT WERE PART OF THE SEVERAL FACTORS THAT MR.
21 LANE MENTIONS HERE?

22 A. MY DEPRESSION OVER THIS ISSUE. AND MY CONSTANT
23 NEED TO DEVOTE ATTENTION TO IT TOOK AWAY FROM MY
24 TIME TO DEVOTE TO THE APPLE CUSTOMERS THAT WERE
25 COMING IN. I COULDN'T KEEP UP.

1 Q. HAVE YOU EVER BEEN TREATED FOR DEPRESSION BEFORE?

2 A. NO.

3 Q. HAVE YOU EVER BEEN DIAGNOSED WITH DEPRESSION?

4 A. NO.

5 Q. HAVE YOU EVER HAD ANYBODY TELL YOU YOU SHOULD BE
6 TREATED FOR DEPRESSION?

7 A. NO. THAT HAS NO BEARING ON THIS, THOUGH.

8 Q. ARE YOUR ANSWERS TRUTHFUL OR NOT? HAS SOMEBODY
9 EVER TOLD YOU YOU SHOULD BE TREATED FOR
10 DEPRESSION?

11 A. NO.

12 Q. MR. LANE MAILED THIS BACK TO YOU, THIS LETTER?

13 A. BECAUSE WE DISSOLVED OUR RELATIONSHIP DOESN'T MEAN
14 IT WAS UNAMICABLE. I MEAN HE -- WE HAD TALKED A
15 COUPLE WEEKS BEFORE ABOUT, YOU KNOW, RENEWING MY
16 CONTRACT. AND HE FOLLOWS THIS UP IN THE SECOND --
17 OR THE THIRD PARAGRAPH AND SAYS, "IT IS ACCURATE
18 TO SAY THAT HAD THIS LAWSUIT NOT BEEN INSTIGATED,
19 WE WOULD MOST LIKELY STILL BE IN A WORKING
20 RELATIONSHIP."

21 Q. I'M ASKING HOW YOU GOT THE LETTER. DID HE MAIL IT
22 BACK TO YOU?

23 A. NO, I WENT AND PICKED IT UP.

24 Q. AND YOU WOULD AGREE THIS IS SIMPLY A LETTER. IT'S
25 NOT A SWORN STATEMENT. IT'S NOT NOTARIZED.

1 A. IT'S HIS AFFIDAVIT.

2 Q. DO YOU UNDERSTAND WHAT AN AFFIDAVIT IS --

3 A. YES, I DO.

4 Q. -- COMPARED TO A NORMAL LETTER?

5 A. YES, I DO.

6 Q. WHAT'S THE DIFFERENCE BETWEEN AN AFFIDAVIT AND A
7 REGULAR PIECE OF CORRESPONDENCE?

8 A. AN AFFIDAVIT IS A SWORN STATEMENT BEFORE THE COURT
9 TO MAKE A STATEMENT. AND I GUESS THERE SHOULD
10 HAVE BEEN SOME PAPERWORK WITH THIS. BUT AS PRO
11 SE, THIS SUFFICED AS FAR AS THE CLERK OF COURT
12 TOLD ME. I PRESENTED THIS TO THE CLERK OF COURT
13 AS SUCH, AND SHE SAID THAT IS ACCEPTABLE AS PRO SE
14 LITIGANT.

15 Q. YOU'RE AWARE OF SOME RULE THAT ALLOWS PRO SE
16 LITIGANTS TO SUBMIT HEARSAY DOCUMENTS TO THE COURT
17 FOR CONSIDERATION THAT AREN'T SWORN?

18 A. HE WOULD BE WILLING TO TESTIFY TO THAT FACT. THAT
19 WOULDN'T BE HEARSAY.

20 Q. BUT HE HASN'T DONE SO HERE BY THIS DOCUMENT,
21 THOUGH. THIS IS NOT A SWORN DOCUMENT.

22 A. OKAY, WHATEVER.

23 Q. IS THAT ACCURATE?

24 A. I GUESS. WHATEVER, YES.

25 Q. AND YOU INDICATED THAT IN YOUR KNOWLEDGE

1 AFFIDAVITS ARE SWORN STATEMENTS. SO THIS WOULD
2 NOT BE AN AFFIDAVIT; IS THAT RIGHT?

3 A. OKAY.

4 (EXHIBIT NO. 13 MARKED [COVER SHEET AND BUZZELL
5 STATEMENT]; ATTACHED)

6 EXAMINATION RESUMED BY MR. ELWELL:

7 Q. LET'S LOOK AT WHAT WE'VE MARKED AS NUMBER 13. AND
8 THIS IS A STATEMENT MADE BY -- IS IT BUZZELL?

9 A. YES.

10 Q. AND MR. BUZZELL IS A FRIEND OF YOURS?

11 A. YES.

12 Q. DID YOU DRAFT THIS STATEMENT FOR MR. BUZZELL?

13 A. NO.

14 Q. HOW DID YOU COME TO ASK HIM FOR IT?

15 A. I ASKED HIM THE SAME, AN AFFIDAVIT THAT RELATED TO
16 A -- THE MATTERS BEHIND BIDZIRK AS HE SAW THEM.
17 THAT'S ALL THAT I SAID.

18 Q. HE INDICATES IN HERE THAT IT WAS PART OF YOUR PLAN
19 TO SELL THIS INVENTORY AND TAKE THE MONEY THAT YOU
20 GOT AND USE IT TO TRAVEL THE COUNTRY AND SELL SOME
21 PRODUCT.

22 A. YES.

23 Q. AND THE PRODUCT WAS WHAT?

24 A. THE IPOD ADAPTER.

25 Q. AND THAT WAS YOUR SCHEME FOR MARKETING THE

1 PROJECT, WAS TO SELL SOMETHING ELSE AND FUND YOUR
2 MARKETING TRIP; IS THAT RIGHT?

3 A. WHAT DO YOU MEAN BY SCHEME?

4 Q. THAT WAS YOUR PLAN, WAS TO GENERATE MONEY --

5 A. THAT WAS THE PLAN.

6 Q. -- BY SELLING OLD INVENTORY AND FUND A MARKETING
7 TRIP WITH IT?

8 A. THAT'S CORRECT.

9 Q. WHERE WERE YOU GOING TO GO?

10 A. OHIO, CALIFORNIA, NEW YORK, TENNESSEE, FLORIDA.

11 Q. AND DID YOU HAVE APPOINTMENTS SCHEDULED THERE?

12 A. YES.

13 Q. WHO WITH? DID YOU HAVE AN ITINERARY?

14 A. WITH THE OWNERS OF THOSE BUSINESSES. LIKE PAUL
15 GRIFFIN WOULD HAVE BEEN IN TENNESSEE. JACK
16 CAMPBELL WOULD HAVE BEEN IN TENNESSEE.

17 Q. SO YOU WANT TO GO DO BUSINESS WITH JACK CAMPBELL
18 EVEN THOUGH HE'S MENTALLY UNSTABLE?

19 A. HE'S A VERY TALENTED MARKETING PERSON.

20 Q. THERE'S NOTHING ABOUT THIS STATEMENT THAT
21 INDICATES THAT IT IS A SWORN STATEMENT EITHER, IS
22 THERE?

23 A. IF YOU SAY NOT.

24 Q. WELL, I'M ASKING YOU. DO YOU SEE ANYTHING ABOUT
25 THIS STATEMENT THAT INDICATES THAT IT IS MADE

1 UNDER OATH?

2 A. I MEAN ALL THESE PEOPLE WOULD BE WILLING TO
3 TESTIFY TO THE SAME.

4 Q. I DIDN'T ASK WHETHER THEY'D BE WILLING TO TESTIFY.
5 I'M ASKING IF YOU SEE ANYTHING ON THIS STATEMENT
6 THAT INDICATES THAT THESE PEOPLE WERE MAKING A
7 STATEMENT UNDER OATH.

8 A. NO. LIKE I'VE SAID, YOU'RE MAKING EVERY EFFORT TO
9 CATCH ME ON A TECHNICALITY AS BEST YOU CAN. SO I
10 UNDERSTAND. YOU'RE NOT TRYING TO WIN THIS CASE
11 BASED ON ANY MERIT. YOU'RE TRYING TO WIN IT ON
12 TECHNICALITY.

13 Q. WHY DO YOU THINK THAT?

14 A. I MEAN OBVIOUSLY BY THIS. THIS IS OBVIOUS THAT IT
15 WAS WRITTEN BY THESE PEOPLE. I'M HERE, A SWORN
16 STATEMENT. I'M A CHRISTIAN. I HAVE NO MOTIVATION
17 TO LIE. SO THERE'S OBVIOUS -- THIS IS AN OBVIOUS
18 STATEMENT. I SAY THAT THE PEOPLE CAN TESTIFY TO
19 THIS FACT. AND FROM WHAT I CAN TELL, YOU'RE
20 PROBABLY GOING TO TRY TO GET THESE DISMISSED AS
21 STATEMENTS SO THAT THERE WON'T -- THEY WON'T BE
22 EVIDENCE IN COURT BECAUSE THEY'RE NOT SWORN
23 AFFIDAVITS.

24 Q. AND DO YOU THINK THAT THE RULES OF EVIDENCE ARE
25 JUST A TECHNICALITY THAT CLEVER PEOPLE USE TO

1 OUTWIT LESS CLEVER PEOPLE?

2 A. THAT'S WHY O.J. GOT OFF.

3 Q. CAN YOU JUST ANSWER MY QUESTION?

4 A. YES, THAT'S MY ANSWER. THAT'S WHY O.J. GOT OFF.

5 O.J. GOT OFF ON -- BECAUSE OF TECHNICALITIES.

6 MURDER. PEOPLE ON MURDER ROW -- OR PEOPLE THAT

7 HAVE MURDERED PEOPLE ON MURDER ROW GET OFF BECAUSE

8 THE GOVERNOR WAS TOO LATE TO SIGN SOMETHING OR

9 MISSED IT ON HIS DESK OR SOMETHING. THAT'S A

10 LEGAL TECHNICALITY. BECAUSE SOMEONE ISN'T READ

11 THEIR MIRANDA RIGHTS IN A MULTIPLE HOMICIDE --

12 Q. DO YOU KNOW WHETHER O.J. WAS NOT PROPERLY

13 MIRANDIZED AND THAT'S WHY HE WAS NOT CONVICTED?

14 A. NO. ACTUALLY HERE IS --

15 Q. HE WAS ACQUITTED BY A JURY, RIGHT?

16 A. BUT HE WAS CONVICTED OF IT IN A CIVIL CASE. SO HE

17 LOST THE EXACT SAME CASE, JUST IN A DIFFERENT

18 COURT.

19 Q. DO YOU UNDERSTAND THAT THERE'S A DIFFERENCE IN

20 BURDENS OF PROOF BETWEEN CIVIL CASES AND CRIMINAL

21 CASES?

22 A. YES, I DO.

23 Q. AND THAT THE SAME EVIDENCE, GIVEN THE SAME WEIGHT,

24 COULD RESULT IN TWO DIFFERENT OUTCOMES IN THE TWO

25 DIFFERENT TYPES OF CASES?

1 A. OKAY.

2 Q. BACK TO THIS AFFIDAVIT, OR STATEMENT. YOU DON'T
3 SEE ANYTHING ON HERE THAT INDICATES THAT IT'S A
4 SWORN STATEMENT, DO YOU?

5 A. NO, I DO NOT.

6 Q. WERE YOU PRESENT WITH MR. BUZZELL WHEN HE SIGNED
7 THIS STATEMENT?

8 A. YES.

9 Q. WHERE WAS IT SIGNED?

10 A. AT HIS OFFICE.

11 Q. IS MR. BUZZELL UNDER ANY KIND OF DISABILITY? IS
12 HE ACTUALLY RIGHT-HANDED AND HE SIGNED IT WITH HIS
13 LEFT HAND, OR ANYTHING?

14 A. NO, BUT I'LL RELAY THAT MESSAGE TO HIM.

15 Q. IT KIND OF LOOKS LIKE HE WAS SIGNING IT IN A
16 MOVING CAR OR SOMETHING. DO YOU KNOW IF HE WAS --

17 A. I DON'T -- I CAN'T REMEMBER. I MEAN I REMEMBER
18 THAT HE SIGNED IT AT HIS OFFICE. I'LL RELAY THAT
19 MESSAGE TO HIM, THAT YOU THINK HE'S DISABLED.

20 Q. I'M ASKING YOU IF HE HAS ANY ISSUE WITH HIS
21 HANDWRITING. THAT'S ALL.

22 A. YOU KNOW, I DON'T KNOW IF YOU'RE AN ARTIST WITH
23 YOUR HANDWRITING OR NOT.

24 Q. SO THAT'S A NO? YOU DON'T KNOW OF ANY --

25 A. THAT'S HIS HANDWRITING. I MEAN, I SAW HIM SIGN

1 IT.

2 Q. YOU RECOGNIZE THIS AS HIS HANDWRITING, AS HIS
3 REGULAR HANDWRITING?

4 A. YES. AND I'LL RELAY THE MESSAGE THAT YOU THINK
5 HE'S DISABLED.

6 Q. THAT WOULD BE INCORRECT. I'M JUST ASKING YOU IF
7 HE WAS UNDER SOME SORT OF -- SUFFERING FROM SOME
8 DIFFICULTY WHEN HE WAS WRITING HIS NAME, BECAUSE
9 IT LOOKS KIND OF SLOPPY, LIKE MAYBE IT'S NOT HIS
10 REGULAR HAND.

11 A. I MEAN I DON'T KNOW WHAT THE CIRCUMSTANCES BEHIND
12 THAT ARE. I KNOW HE HAS BAD HANDWRITING.

13 (EXHIBIT NO. 14 MARKED [7/6/06 COURT FILING]; ATTACHED)
14 EXAMINATION RESUMED BY MR. ELWELL:

15 Q. I'LL SHOW YOU WHAT WE'VE MARKED AS 14. THIS IS A
16 DOCUMENT THAT YOU FILED ON JULY THE 6TH. WHAT'S
17 THE REASON FOR FILING THIS?

18 A. JUST TO NOTIFY THE COURT. SINCE THE COURT HAS NOT
19 GRANTED ME A STATUS HEARING, I HAVE NO IDEA WHAT'S
20 GOING ON. AND YOU SEND SO MANY AMENDMENTS AND
21 REDUNDANT CLAIMS AND UNNECESSARY PAPERWORK TO THE
22 COURTS AND TO MY FRONT DOOR THAT IT'S HARD TO KNOW
23 WHAT I'VE RESPONDED TO AND WHAT I HAVEN'T. SO I'M
24 SAYING HERE PLEASE ALLOW ME SOME LEEWAY.

25 Q. YOU INDICATE HERE IN THE FIRST FULL PARAGRAPH,

1 "SCHMIDT/ELWELL ARE ACCUSTOMED TO HARASSING
2 DEFENDANTS IN LARGE DRAWN OUT COURT CASES." WHAT
3 IS THAT IN REFERENCE TO?

4 A. THE GIRL THAT EMBEZZLED MONEY.

5 Q. THAT STOLE \$300,000 FROM MR. SCHMIDT? THAT WAS
6 HARASSMENT?

7 A. I READ THAT YOU WOULD NOT SETTLE IN ANY
8 CIRCUMSTANCE WHATSOEVER, THAT SHE OFFERED SEVERAL
9 SETTLEMENTS TO YOU.

10 Q. WHERE DID YOU READ THAT?

11 A. IN THE GREENVILLE NEWS. IT SAID THAT SEVERAL
12 SETTLEMENTS WERE OFFERED, AND THAT YOU CHOSE NOT
13 TO ACCEPT THEM.

14 Q. AND DO YOU KNOW WHAT THOSE SETTLEMENTS WERE?

15 A. NO.

16 Q. DO YOU WHETHER THEY WERE ANYTHING CLOSE TO BEING A
17 REASONABLE AMOUNT?

18 A. I'M NOT SURE.

19 Q. AND YET YOU FEEL PERFECTLY COMFORTABLE MAKING A --

20 A. YES, I DO.

21 Q. -- BLANKET STATEMENT LIKE THIS, THAT MR. SCHMIDT
22 AND I ARE ACCUSTOMED TO HARASSING DEFENDANTS IN
23 LARGE DRAWN OUT COURT CASES.

24 A. BUT THERE WERE NO ATTEMPTS BY OPPOSING COUNSEL
25 TO --

1 Q. HOW DO YOU KNOW THAT?

2 A. -- MAKE A SETTLEMENT OFFER.

3 Q. HOW DO YOU KNOW THAT?

4 A. I JUST -- OKAY.

5 Q. DO YOU OR DO YOU NOT KNOW THAT?

6 A. YES, I KNOW THAT.

7 Q. HOW IS IT THAT YOU KNOW THAT, THAT THERE WAS NO
8 ATTEMPT MADE TO SETTLE ANYTHING BY MR. SCHMIDT IN
9 THE LAUDERDALE CASE?

10 A. IT CAME OUT IN THE COURT CASE THAT -- AND SHE SAID
11 THAT SEVERAL TIMES.

12 Q. AND SHE'S IN JAIL FOR WHAT?

13 A. I DON'T CARE WHY SHE'S IN JAIL.

14 Q. SHE'S IN JAIL FOR BEING A THIEF AND BEING
15 DISHONEST, ISN'T SHE?

16 A. BUT SHE WAS ALSO A MOTHER AND A WIFE AND --

17 Q. AND YOU THINK THAT EXCUSES HER FROM STEALING
18 MONEY?

19 A. NO, I DO NOT. I THINK SHE WAS WRONG. IT WAS
20 STILL DRAWN OUT.

21 Q. AND DO YOU KNOW WHY IT WAS DRAWN OUT?

22 A. I DON'T CARE WHY IT WAS DRAWN OUT. I KNOW IT WAS
23 DRAWN OUT.

24 Q. DO YOU KNOW WHOSE DOING IT WAS, THAT IT WAS DRAWN
25 OUT?

1 A. I DON'T CARE. I JUST KNOW THAT IT WAS DRAWN OUT.

2 Q. YOU EVIDENTLY CARED TO BLAME MR. SCHMIDT FOR IT
3 AND TO BLAME ME FOR IT.

4 A. YEAH.

5 Q. I DON'T SEE THE STATEMENT READING CHRIS AND GWEN
6 LAUDERDALE ARE ACCUSTOMED TO DRAWING OUT COURT
7 CASES IN WHICH THEY'RE DEFENDANTS. COULD THAT NOT
8 ALSO BE TRUE?

9 A. I'M SORRY THAT OFFENDED YOU.

10 Q. YOU KNOW, WHAT OFFENDS ME IS YOU MAKING BLANKET
11 STATEMENTS ABOUT SOMETHING YOU REALLY DON'T KNOW
12 ABOUT, WHICH JUST SEEMS TO BE A HABIT WITH YOU.

13 A. WELL, WHAT OFFENDS ME IS THAT YOU SUBMIT ALL THIS
14 INFORMATION THAT I'M A LIAR, A CHEAT, EVERYTHING
15 TO THE COURT, WHEN I --

16 Q. WHEN IS THAT?

17 A. -- DO BUSINESS WITH A LOT OF PEOPLE IN THE COURT.

18 Q. WHEN HAVE I SAID THAT YOU WERE A LIAR TO THE
19 COURT?

20 A. OBVIOUSLY YOU'RE SAYING THAT I'VE LIED IN MY
21 STATEMENTS AND EVERYTHING IN MY ARTICLE.

22 Q. WHAT STATEMENTS?

23 A. YOU SAID THAT THEY'RE UNTRUE IN YOUR INITIAL
24 FILING, THAT THE STATEMENTS THAT I MAKE ARE UNTRUE
25 AND DEFAMATORY. THAT'S CALLING ME A LIAR. LOOK

1 UP THE DEFINITION FOR "LIAR" AND IT SAYS A PERSON
2 WHO SAYS THINGS THAT ARE UNTRUE.

3 Q. AND WHERE HAVE YOU BEEN CALLED A CHEAT?

4 A. THAT WAS A CURSORY TERM.

5 Q. CURSORY TERM? WHAT DOES THAT MEAN?

6 A. I'M GOING TO WAIT FOR YOU TO MOVE ON.

7 Q. WHAT DO YOU MEAN BY "THAT'S A CURSORY TERM"?

8 A. I JUST -- I SAID THAT AS A, YOU KNOW, YOU'VE
9 CALLED ME EVERY NAME IN THE BOOK THAT I CAN THINK
10 OF KIND OF WAY. AND FRANKLY, I THINK YOU'RE A
11 DICK. I MEAN THIS IS -- WE'RE NOW AT WHAT? TWO
12 AND A HALF HOURS, THREE HOURS.

13 Q. I DON'T KNOW. THE VIDEOGRAPHER COULD TELL US WHAT
14 HIS CLOCK SHOWS. WHY IS IT THAT YOU THINK THAT?

15 A. I MEAN, AGAIN, I'LL RELATE TO THE TECHNOLOGY LAW
16 BLOG WHERE HE SAYS, "I JUST CAN'T FATHOM WHY THIS
17 ATTORNEY IS POSSIBLY HEADING ON THIS LAWSUIT. IT
18 DOESN'T MAKE ANY SENSE."

19 Q. THIS AGAIN IS THIS PROFESSOR IN CALIFORNIA THAT
20 HASN'T READ THE PLEADINGS IN THE CASE?

21 A. HE'S READ EVERYTHING THAT I KNOW OF.

22 Q. HOW DO YOU KNOW THAT?

23 A. BECAUSE I'VE SENT IT TO HIM.

24 Q. WELL, THAT DOESN'T MEAN HE'S READ IT, DOES IT?

25 A. WELL, OKAY.

1 Q. DO YOU THINK IT'S POSSIBLE THAT THIS LAW PROFESSOR
2 MIGHT BE COMING FROM THE POINT OF VIEW THIS SEEMS
3 AWFULLY EXPENSIVE, AN AWFULLY EXPENSIVE WAY TO
4 VINDICATE ONE'S PRINCIPLES IF YOU'RE MR. SCHMIDT?

5 A. HE SAID THAT'S A POSSIBILITY, BUT HE DOESN'T SEE
6 IT THAT WAY.

7 Q. YOU SAY A MATTER OF PUBLIC RECORD -- WE'RE STILL
8 IN EXHIBIT 14. "A MATTER OF PUBLIC RECORD
9 INDICATES THAT A RECENT TRIAL WAS PROTRACTED
10 RELENTLESSLY UNTIL THE OPPOSING PARTY COULD STAND
11 NO LONGER." YOU'RE REFERRING TO THE SAME CASE?

12 A. SHE WAS -- YES.

13 Q. WHAT TRIAL ARE YOU REFERRING TO?

14 A. THE TRIAL FOR HER, WHERE SHE -- I MEAN YOU FINALLY
15 WENT TO TRIAL.

16 Q. HER CRIMINAL CASE?

17 A. YES.

18 Q. AND THE MATTER OF PUBLIC RECORD THAT YOU'RE
19 REFERRING TO IS WHAT?

20 A. IS THAT CASE WHERE SHE STATES THAT YOU -- THERE
21 WAS -- SHE STATED IN THAT CASE THAT SHE TRIED TO
22 MAKE A LOT OF SETTLEMENTS AND THAT THERE WAS JUST
23 NO SETTLEMENT OFFER, NO NEGOTIATIONS THAT WERE
24 REASONABLE. AND I'M NOT BACKING HER UP. I'M JUST
25 -- I JUST KNOW THAT YOU'RE A PARTY TO PROTRACTED

1 LAWSUITS, BECAUSE IT COULD HAVE BEEN SETTLED A LOT
2 SOONER FROM WHAT I CAN TELL.

3 Q. IF SOMEBODY STOLE \$100,000 FROM YOU AND THEN CAME
4 BACK TO YOU AND SAID, "I'LL TELL YOU WHAT. I'LL
5 GIVE YOU 40,000 OF IT," WOULD YOU SAY THAT THAT'S
6 FINE, I DON'T WANT TO PROTRACT THIS LITIGATION?

7 A. NO, BUT I WOULD SAY, "LET'S DO 40,000 AND DOCK
8 YOUR PAY FOR THE NEXT WHILE. I THINK WE'LL WORK
9 OUT A CASE WHERE YOU HAVE HOUSE ARREST."

10 Q. DO YOU KNOW THAT MR. SCHMIDT DID OR DIDN'T DO
11 SOMETHING SIMILAR TO THAT BY --

12 A. I DON'T CARE.

13 Q. -- WAY OF COUNTER OFFER?

14 A. I DON'T CARE.

15 Q. YOU DON'T CARE, BECAUSE IT'S MUCH EASIER FOR YOU
16 JUST TO TAKE ADVANTAGE OF HALF TRUTHS AND PUBLISH
17 THOSE TO THE COURT THAN IT IS TO INVESTIGATE
18 SOMETHING FULLY AND --

19 A. THERE'S NO SUCH THING AS A HALF TRUTH. IT'S
20 EITHER TRUE OR NOT.

21 Q. WELL, OKAY, THEN THIS IS FALSE, AND YOU'RE MORE
22 COMFORTABLE PUBLISHING THAT, RIGHT?

23 A. I DIDN'T PUBLISH THIS.

24 Q. YOU DID PUBLISH IT. YOU FILED IT WITH THE COURT.
25 IT'S A PUBLIC DOCUMENT. WHY DO YOU SAY THE RECENT

1 TRIAL WAS PROTRACTED RELENTLESSLY? WHAT DOES THAT
2 MEAN?

3 A. I THINK IT WENT ON TOO LONG. THAT'S MY OPINION.

4 Q. DO YOU KNOW HOW LONG IT WENT ON?

5 A. I CAN'T -- I DON'T REMEMBER THE DETAILS NOW.

6 Q. AND, "UNTIL THE OPPOSING PARTY COULD STAND NO
7 LONGER." WHAT DOES THAT MEAN?

8 A. JUST, I MEAN, SHE FINALLY JUST GAVE UP.

9 Q. AND SAID GO AHEAD AND CONVICT ME AND SEND ME TO
10 JAIL, OR --

11 A. THAT'S PRETTY MUCH --

12 Q. -- WHAT DID SHE SAY?

13 A. PRETTY MUCH.

14 Q. DO YOU KNOW WHETHER MS. LAUDERDALE WAS CONVICTED
15 BY A JURY?

16 A. I CAN'T REMEMBER THAT DETAIL EITHER. THIS WAS
17 WRITTEN A LONG TIME AGO.

18 Q. "OPPOSING PARTY HAD OFFERED ON SEVERAL OCCASIONS
19 TO SETTLE WITH FULL RESTITUTION, WITH INTEREST,
20 YET SCHMIDT INSISTED ON A COURT VERDICT." WHAT IS
21 YOUR BASIS FOR SAYING THAT ANYBODY IN THE
22 LAUDERDALE CASE OFFERED TO SETTLE WITH FULL
23 RESTITUTION?

24 A. THE WYFF COVERAGE OF THAT INDICATED THAT TO ME.

25 Q. AND WHAT DID THAT COVERAGE SAY?

1 A. THAT SHE HAD OFFERED ON SEVERAL OCCASIONS TO
2 SETTLE.

3 Q. DO YOU KNOW WHAT FULL RESTITUTION MEANS?

4 A. THE ACTUAL AMOUNT THAT SHE STOLE WITH INTEREST.

5 Q. AND DO YOU KNOW YOURSELF THAT SHE EVER OFFERED TO
6 DO THAT?

7 A. I MEAN, THAT'S WHAT THE YFF INVESTIGATION TOLD ME.

8 Q. AND THIS IS A TV REPORT?

9 A. YES.

10 Q. AND YOU WATCHED HOW MANY SEGMENTS ABOUT THIS
11 PARTICULAR CASE?

12 A. I FOLLOWED IT VERY, VERY CLOSELY.

13 Q. EVIDENTLY NOT.

14 A. OKAY.

15 Q. AND DO YOU UNDERSTAND THAT ONCE THE DISTRICT
16 ATTORNEY IS PROSECUTING A CASE, THAT THE STATE IS
17 THE ONE PROSECUTING IT AND NOT MR. SCHMIDT?

18 A. OKAY.

19 Q. DID YOU UNDERSTAND THAT BEFORE I JUST SAID THAT?

20 A. NO.

21 Q. YOU SAY NEXT, "EVEN AN EXPERIENCED ATTORNEY WOULD
22 NOT BE ABLE TO UNDERSTAND OR COMPREHEND THE NON-
23 SEQUITUR ARGUMENTS PLAINTIFF'S ATTORNEY, ELWELL,
24 MAKES." WHAT ARE YOU REFERRING TO THERE?

25 A. LIKE, FOR INSTANCE, I GAVE YOU THAT STANBUCKS

1 VERSUS STARBUCKS. THAT MAKES NO SENSE TO THIS
2 CASE WHATSOEVER. THAT WAS A COMPANY THAT WAS A
3 COMPETITOR USING THE SAME -- SELLING THE EXACT
4 SAME PRODUCT WITH A VERY, VERY SIMILAR NAME. AND
5 I'M NOT DOING THAT. THEY LOST THAT CASE BECAUSE
6 THEY'RE ONE LETTER DIFFERENT.

7 Q. DO YOU KNOW HOW MANY CASES BIDZIRK HAS CITED IN
8 ITS PAPERS TO THE COURT TO SUPPORT ITS ARGUMENTS?

9 A. A LOT, AND YOU'VE LOST THE INJUNCTION HEARING.

10 Q. MANY MORE THAN JUST A STARBUCKS CASE, CORRECT?

11 A. SURE.

12 Q. YOU HAVE NO LEGAL TRAINING, DO YOU?

13 A. NO.

14 Q. SO YOU'RE NOT REPRESENTING THAT YOU CAN READ A
15 CASE --

16 A. YOU'VE MADE A LOT OF NON-SEQUITUR ARGUMENTS,
17 THOUGH.

18 Q. DO YOU KNOW WHAT THAT MEANS, NON-SEQUITUR? DO YOU
19 KNOW WHAT THE TERM MEANS?

20 A. YEAH, IT DOESN'T FIT TOGETHER.

21 Q. AND THAT'S IN YOUR JUDGMENT AS SOMEBODY WITH NO
22 LEGAL TRAINING, IS THAT RIGHT, THAT YOU WOULD --

23 A. YOU KNOW, AGAIN --

24 Q. -- AS NON-SEQUITUR ARGUMENTS?

25 A. THE STRATEGIC LAW INSTITUTE SAYS THE EXACT SAME

1 THING, THAT THERE SEEM TO BE A LOT OF NON-SEQUITUR
2 ARGUMENTS RELATING TO SERVICE MARK INFRINGEMENT IN
3 THIS CASE.

4 Q. AND THE STRATEGIC LAW INSTITUTE BEING A WEBSITE?

5 A. YES, WRITTEN BY ATTORNEYS.

6 Q. WHEN HAVE THEY PUBLISHED ANYTHING ABOUT THIS CASE?

7 A. YOU KNOW, JUST GOOGLE FOR IT.

8 Q. YOU SAY, "THE CONTINUED DISTORTION OF THE LAW AND
9 PUBLIC RECORD." WHAT DOES THAT MEAN? HOW CAN YOU
10 DISTORT PUBLIC RECORD?

11 A. I WILL GO BACK TO THE STARBUCKS AND STANBUCKS
12 CASE. THAT IS A TOTAL DISTORTION OF THE LAW. IT
13 HAS NOTHING TO DO WITH THIS CASE WHATSOEVER, YET
14 YOU MADE ARGUMENTS THAT IT DID.

15 Q. DO YOU HAVE ANY MORE EXAMPLES BESIDES THAT?

16 A. THAT'S MY MAIN EXAMPLE. I PROBABLY DO, BUT I
17 DON'T HAVE THAT INFORMATION IN FRONT OF YOU, IN
18 FRONT OF ME.

19 Q. AND WHERE IS IT THAT YOU RECOLLECT A STARBUCKS
20 CASE WAS CITED?

21 A. YOU CITED THE STARBUCKS VERSUS STANBUCKS CASE
22 AS -- BECAUSE IT WAS A COPYRIGHT AND SERVICE MARK
23 INFRINGEMENT CASE. AND SAID THAT, YOU KNOW,
24 STANBUCKS LOST AND HAD TO CHANGE THEIR NAME. AND
25 THEREFORE -- YOU KNOW, I DON'T KNOW HOW YOU

1 RELATED IT, BUT YOU DID.

2 MR. ELWELL:

3 LET'S GO OFF THE RECORD FOR A MOMENT.

4 (OFF THE RECORD; BRIEF RECESS)

5 EXAMINATION RESUMED BY MR. ELWELL:

6 Q. MR. SMITH, WE'RE STILL TALKING ABOUT EXHIBIT 14.

7 I'LL REPRESENT TO YOU ON THE RECORD THAT DURING

8 THE BREAK I HAVE CHECKED MY FILE AND CANNOT LOCATE

9 IN ANY BRIEF THAT I FILED WITH THE COURT IN THIS

10 CASE ANY REFERENCE TO ANY CASE INVOLVING

11 STARBUCKS. SO BASED ON THAT, I'LL ASK YOU IF IT'S

12 POSSIBLE THAT YOU'RE THINKING OF SOME OTHER MATTER

13 AND NOT THIS CASE --

14 A. MUST BE.

15 Q. -- WHEN YOU HAVE REFERRED TO ANY STARBUCKS CASE.

16 A. I'M SORRY I GOT THAT INACCURATE.

17 Q. IS THERE ANY OTHER REFERENCE THAT YOU CAN MAKE TO

18 SOMETHING THAT YOU WOULD CONSIDER TO BE A NON-

19 SEQUITUR ARGUMENT IN ANY WRITTEN SUBMISSIONS BY

20 THIS PARTY TO THE COURT IN THIS CASE?

21 A. THIS WAS ALL FILED SO LONG AGO THAT I CAN'T

22 REMEMBER AT THIS TIME.

23 Q. NEAR THE BOTTOM OF THIS PAGE YOU INDICATE,

24 "OPPOSING ATTORNEY ELWELL HAS FILED A MOTION THAT

25 I RETYPE AND RE-WORD MY ARGUMENTS IN MY COUNTER

1 SUIT AND DOCUMENTS FILED THUS FAR." YOU'RE
2 REFERRING TO THE MOTION TO STRIKE THAT WE FILED IN
3 THIS CASE?

4 A. NO. YOU SAID THE EXACT SAME THING, THAT I WAS
5 MAKING RIDICULOUS -- I THINK YOU USED
6 "UNINTELLIGIBLE STATEMENTS" TO THE COURT, AND YOU
7 REQUESTED THAT I RETYPE MY --

8 Q. YOU DISAGREE THAT A LOT OF WHAT YOU SENT TO THE
9 COURT DOESN'T MAKE ANY SENSE?

10 A. I DISAGREE WITH THAT, YEAH.

11 Q. AND YOU DISAGREE THAT A LOT OF WHAT YOU SENT TO
12 THE COURT AREN'T EVEN PROPER ENGLISH SENTENCES?

13 A. IT'S GOOD ENOUGH.

14 Q. GOOD ENOUGH MEANING WHAT, THAT THEY ARE OR THEY
15 AREN'T PROPER ENGLISH SENTENCES?

16 A. I AGREE THAT THEY ARE GOOD ENOUGH. I MEAN YOU'VE
17 MADE A COUPLE GRAMMATICAL MISTAKES, GRAMMAR
18 MISTAKES TOO, I'M SURE.

19 Q. BUT CAN YOU NAME ONE NOW THAT I'VE MADE IN THIS
20 CASE?

21 A. YES. IN FACT, I HAVE AN EXAMPLE OF ONE, A
22 DOCUMENT THAT YOU PRESENTED TO THE COURT THAT WAS
23 NOT ACCURATE. WHERE WAS MY PAPERWORK? (REVIEWING
24 DOCUMENTS). THERE YOU GO.

25 Q. WHAT'S THIS?

1 A. THAT'S WHERE YOU SENT ITEMS TO ME FOR THE FIRST
2 THREE MONTHS OF ALL THIS LITIGATION.

3 Q. TO THE INCORRECT ADDRESS?

4 A. TO THE INCORRECT ADDRESS. IT TOTALLY CONFUSED THE
5 COURT AND EVERYTHING ELSE, BECAUSE THEY WERE
6 SENDING IT TO THE WRONG ADDRESS AS WELL.

7 Q. AND THAT'S A GRAMMATICAL MISTAKE WHY?

8 A. YEAH, BECAUSE I DON'T LIVE AT 5-B AND I DON'T LIVE
9 AT 600 CLEVELAND STREET. THIS IS ATTACHED TO ALL
10 YOUR ARGUMENTS.

11 Q. WHAT PART OF A TYPED ADDRESS IMPLICATES ANY
12 GRAMMAR RULES?

13 A. THAT IT REPRESENTS POOR FACT CHECKING ON YOUR
14 PART.

15 Q. IS THAT THE ONLY EXAMPLE YOU CAN STATE AT THIS
16 TIME?

17 A. THAT'S A REALLY GOOD EXAMPLE THAT I HAVE. ALSO,
18 MY NAME IS SPELLED PHILIP WITH ONE "L", NOT PHILIP
19 WITH TWO L'S.

20 Q. AND IS IT YOUR CONTENTION THAT THIS OFFICE
21 GENERATED THAT COVER SHEET?

22 A. YES.

23 Q. I'LL REPRESENT TO YOU THAT IT DID NOT.

24 A. THIS WAS SENT TO ME FROM THE COURT, BUT YOUR ITEMS
25 WERE LIKE THIS TOO.

1 Q. I DON'T SUPPLY THE COURT WITH THOSE COVER SHEETS.

2 A. OKAY. YOU WERE SENDING IT TO THE SAME ADDRESS,
3 BECAUSE THEY GOT -- MY FIRST FEW GOT BOUNCED.

4 Q. YOU INDICATE ALSO HERE, "I AM A PROFESSIONAL
5 WRITER WITH MANY AWARDS."

6 A. WE'VE ALREADY COVERED THAT.

7 Q. THESE ARE THE SAME AWARDS THAT YOU WERE --

8 A. YES.

9 Q. -- REFERRING TO EARLIER THAT YOU WON IN JUNIOR
10 HIGH SCHOOL?

11 A. THAT'S MY KICK BALL AWARDS.

12 Q. "MY ARGUMENTS, WHILE POSSIBLY MORE EMOTIONAL THAN,
13 QUOTE, "LEGALESE", END QUOTE, ARE CONCISE AND ALSO
14 HAVE PHYSICAL AFFIDAVIT AND ACTUAL CIRCUMSTANCE TO
15 BACK IT UP AS PREVIOUSLY PRESENTED." WHAT DOES
16 THAT MEAN?

17 A. I SUBMITTED THOSE STATEMENTS, AND MY CIRCUMSTANCE
18 -- THAT MEANS THAT I BACKED UP EVERYTHING THAT I
19 HAVE IN THE ARTICLE, BECAUSE IT REALLY HAPPENED.

20 Q. THAT'S WHAT THAT MEANS?

21 A. YEAH, EVERYTHING IN THE ARTICLE IS BACKED UP
22 BECAUSE IT REALLY HAPPENED. AND I HAVE SEVERAL
23 PEOPLE THAT CAN PROVE IT. DAVID BUZZELL CAN PROVE
24 IT, AND MIKE LANE CAN PROVE IT, AND TY SHOULD
25 ADMIT IT.

1 Q. WELL, MAYBE WE'LL JUST TAKE THOSE FOLKS'
2 DEPOSITIONS AND SEE WHAT THEY REMEMBER.

3 A. YEAH, I'M SURE YOU WILL.

4 Q. YOU SAY IN HERE ALSO, "PROOF EXISTS THAT SCHMIDT
5 HIRED A REPUTATION MANAGEMENT FIRM CALLED
6 CONVERSEON TO BURY MY ARTICLES WITHIN SEARCH
7 ENGINES EVEN THOUGH THE COURT RULED AGAINST THE
8 REMOVAL AND AN INJUNCTION HEARING." WHAT'S YOUR
9 BASIS FOR SAYING THAT MR. SCHMIDT HIRED A FIRM
10 CALLED CONVERSEON?

11 A. WHO ELSE WOULD HIRE CONVERSEON TO BURY THE
12 ARTICLE? THAT DOESN'T MAKE ANY SENSE.

13 Q. WHERE IS CONVERSEON LOCATED?

14 A. I THINK THEY'RE IN VIRGINIA.

15 Q. AND HOW DO YOU KNOW THAT THEY WERE HIRED? ARE
16 THEY THE ONES THAT PUT OUT THOSE BOTS?

17 A. CENSOR BOT, YES, AND MADE A GATEWAY PAGE FROM MY
18 PAGE.

19 Q. YOU SAY, "PROOF EXISTS THAT SCHMIDT HIRED THIS
20 FIRM." WHAT PROOF EXISTS?

21 A. I HAVE THE ACTUAL PAGE WHERE MY GATEWAY PAGE WAS,
22 AND I HAVE -- I DON'T UNDERSTAND SEARCH ENGINE
23 REPUTATION MANAGEMENT. I MEAN, WHO ELSE WOULD DO
24 THAT FOR THAT ARTICLE? THAT WAS THE ONLY ARTICLE
25 ON CONVERSEON AND IT'S ODD THAT THAT CAME JUST

1 AFTER THE INJUNCTION RULING.

2 Q. BUT YOU DON'T KNOW WHETHER MR. SCHMIDT HIRED THAT
3 FIRM?

4 A. I DO NOT. I COULD FIND OUT.

5 Q. YET YOU FEEL COMFORTABLE REPRESENTING THAT TO THE
6 COURT IN THIS DOCUMENT?

7 A. YES, I DO.

8 Q. ARE YOU FAMILIAR WITH RULE 11 AT ALL UNDER FEDERAL
9 RULES THAT INDICATES THAT IF YOU SIGN A PAPER
10 FILED WITH THE COURT, YOU'RE TO HAVE A GOOD FAITH
11 BASIS FOR ANYTHING THAT YOU SAY IN THE PAPER?

12 A. I ALSO KNOW THAT I'M PRO SE.

13 Q. THAT DOESN'T MEAN THAT THE FEDERAL RULES DON'T
14 APPLY TO YOU. DO YOU UNDERSTAND THAT?

15 A. I UNDERSTAND THAT.

16 Q. YOU WOULD AGREE THEN, THAT YOU LACK A GOOD FAITH
17 BASIS FOR MAKING THE STATEMENT THAT MR. SCHMIDT
18 HIRED --

19 A. AND THE COURT WOULD AGREE --

20 Q. -- THE FIRM?

21 A. THE COURT WOULD AGREE ALSO THAT THIS IS A NON-
22 ISSUE TO A SERVICE MARK CASE.

23 Q. IT'S AN ISSUE THAT YOU BROUGHT UP IN THIS FILING,
24 NOT BIDZIRK, CORRECT?

25 A. OKAY.

1 Q. THIS IS YOUR FILING?

2 A. YES.

3 Q. YOU WOULD AGREE THAT YOU HAVE NO GOOD FAITH BASIS
4 FOR STATING THAT MR. SCHMIDT HIRED CONVERSEON TO
5 DO ANYTHING --

6 A. NO. I BELIEVE THAT I DO HAVE A GOOD, A
7 REASONABLE --

8 Q. WHAT'S YOUR GOOD FAITH BASIS, OTHER THAN SAYING
9 WHO ELSE COULD IT BE?

10 A. THAT'S MY GOOD FAITH.

11 Q. DO YOU HAVE ANY OTHER EVIDENCE THAT YOU THINK
12 INDICATES THAT MR. SCHMIDT HIRED CONVERSEON OTHER
13 THAN YOUR GENERAL FEELING THAT IT MUST BE HIM?

14 A. WELL, FIRST OF ALL, I'VE BEEN WRITING ON MY
15 WEBSITE FOR A VERY, VERY LONG TIME. FIVE YEARS.
16 I HAVE NEVER EVEN REMOTELY HEARD OF SEARCH ENGINE
17 REPUTATION MANAGEMENT UNTIL THIS CAME UP. AND
18 THEN ONE DAY I GOOGLED FOR BIDZIRK AND MY ARTICLE
19 DIDN'T COME UP ANYMORE. AND SO I STARTED DOING
20 RESULTS THAT WERE OMITTED, AND THAT PAGE CAME UP
21 FOR CONVERSEON. SO I CONTACTED THEM, AND I WILL
22 SHOW YOU HOW I CONTACTED THEM.

23 Q. REGARDLESS, DID ANYBODY AT CONVERSEON SAY, "OH, WE
24 WERE HIRED BY BIDZIRK, OR WE WERE HIRED BY TY
25 SCHMIDT"?

1 A. LIKE I SAID, I WILL HAVE TO SUBPOENA THAT
2 INFORMATION. THEY CAN'T GIVE OUT INFORMATION
3 ABOUT THEIR CLIENTS.

4 Q. SO YOU DON'T HAVE ANY EVIDENCE THAT MR. SCHMIDT
5 HIRED CONVERSEON TO DO ANYTHING, WHETHER BIDZIRK
6 HIRED CONVERSEON TO DO ANYTHING?

7 A. A REASONABLE --

8 Q. YOU HAVE A SUSPICION?

9 A. YES.

10 Q. YOU HAVE NOTHING ELSE BUT YOUR PERSONAL SUSPICION?

11 A. YES, AND THAT'S GOOD FAITH FOR ME.

12 Q. GOOD FAITH FOR YOU?

13 A. YES.

14 Q. WHY IS THAT GOOD FAITH FOR YOU?

15 A. I'VE NEVER HAD IT HAPPEN ON ANY OF MY OTHER
16 ARTICLES. AND I'VE WRITTEN, YOU KNOW, A LOT MORE
17 DETAILED ARTICLES ABOUT OTHER THINGS. AND NO ONE
18 HAS EVER DONE THAT BEFORE. AND I THINK THAT THEY
19 HAVE THE -- I THINK THAT JACK CAMPBELL WOULD HAVE
20 HAD THE ACUMEN TO DO THAT, DO SOMETHING LIKE THAT.
21 I'VE WRITTEN A LOT MORE STUFF ABOUT HIM.

22 Q. YOU ALSO INDICATED THAT HE'S UNSTABLE, RIGHT? SO
23 MAYBE HE DOESN'T --

24 A. TY SCHMIDT WAS UNSTABLE WITH ME ON THE DAY THAT WE
25 HAD OUR LAST MEETING.

1 Q. WHY DO YOU THINK THAT ANYBODY THAT MIGHT GET UPSET
2 WITH YOU MUST BE UNSTABLE?

3 A. NOBODY GETS UP AND SHAKES THEIR FINGER AND ALMOST
4 HITS SOMEBODY'S NOSE AND SAYS, "WELL, YOU JUST DO
5 THAT, THEN. SUE US, IF YOU WANT THE MONEY."

6 Q. DID YOU MAKE ANY POSTING ABOUT YOUR EXPERIENCE
7 WITH THE WEGENER COMPANY?

8 A. YES.

9 Q. AND THAT WAS IN FEBRUARY OF THIS YEAR?

10 A. YES.

11 Q. AND IT'S TRUE, ISN'T IT, THAT YOU INDICATED IN
12 THOSE POSTINGS THAT PEOPLE SHOULD GATHER AROUND
13 WITH THEIR PITCHFORKS AND TORCHES AND MARCH ON
14 WEGENER LIKE THEY DO IN HORROR MOVIES, AND THAT
15 THEY SHOULD TAKE MOLATOV COCKTAILS WITH THEM, TOO?
16 DID YOU WRITE THAT?

17 A. I WAS MAKING -- AND THAT WAS NOT PUBLISHED IN
18 FEBRUARY. THAT MIGHT HAVE BEEN RE-PUBLISHED IN
19 FEBRUARY. IT WAS PUBLISHED IN OCTOBER OF LAST
20 YEAR.

21 Q. WELL, REGARDLESS OF WHEN IT WAS PUBLISHED OR RE-
22 PUBLISHED --

23 A. THAT WAS A -- THAT WAS ALSO A ALLEGORY TALE WHERE
24 I TALKED ABOUT ATTACK OF THE WAYGONER. THAT WAS A
25 -- THAT WAS MEANT TO BE FUNNY, NOT TO BE TAKEN

1 SERIOUSLY. AND NO ONE WOULD TAKE THAT SERIOUSLY.

2 Q. NO ONE WOULD?

3 A. NO ONE.

4 Q. DO YOU THINK THAT MR. WEGENER READ THAT AND HEARD
5 THAT YOU WERE CALLING FOR HIM TO BE MARCHED UPON
6 AND PEOPLE TO BRING MOLATOV COCKTAILS, AND THAT HE
7 MIGHT NOT --

8 A. I DON'T CARE WHAT MR. WEGENER THINKS.

9 Q. YOU DON'T? YOU DON'T CARE IF YOU WOULD HAVE
10 ALARMED HIM? AND YOU DON'T THINK IT'S A BIT
11 UNBALANCED FOR SOMEBODY TO SUGGEST THAT PEOPLE
12 SHOULD GO AFTER SOMEBODY WITH PITCHFORKS AND
13 MOLATOV COCKTAILS BECAUSE HE DIDN'T GIVE YOU \$400
14 YOU THOUGHT YOU WERE DUE?

15 A. THAT HAS NOTHING TO DO WITH THE BIDZIRK ARTICLE.

16 Q. I'M NOT ASKING ABOUT THE BIDZIRK ARTICLE. I'M
17 ASKING ABOUT THE --

18 A. I KNOW YOU'RE NOT.

19 Q. -- WEGENER ARTICLE.

20 A. SO YOU NEED TO MOVE ON.

21 Q. NO, YOU NEED TO ANSWER MY QUESTIONS.

22 A. I'VE ANSWERED YOUR QUESTION GOOD ENOUGH.

23 Q. NO, YOU HAVEN'T.

24 A. OKAY, THEN I'LL JUST SIT HERE.

25 Q. DO YOU THINK THAT THAT'S UNBALANCED AT ALL FOR

1 SOMEBODY TO SUGGEST THAT --

2 A. NO, I DON'T. IT WAS -- I SAID IT WAS SATIRE.

3 Q. WHERE DID YOU SAY IT WAS SATIRE? JUST HERE TODAY?

4 A. I SAID IT WAS SATIRE.

5 Q. AND HOW IS IT THAT ANYBODY WOULD KNOW FROM READING
6 THE ARTICLE THAT IT WAS SATIRE?

7 A. BECAUSE IT'S NOT SERIOUS, TO EVEN START WITH.

8 Q. EXCEPT THAT YOU WERE ABSOLUTELY ANGRY AT WEGENER
9 COMPANY FOR NOT GIVING YOU THE MONEY.

10 A. I WASN'T ANGRY.

11 Q. YOU WEREN'T?

12 A. I DON'T GET ANGRY LIKE THAT. I DON'T TAKE
13 REVENGE.

14 Q. YOU DON'T?

15 A. NO.

16 Q. BUT YOU MADE A BETTER BUSINESS BUREAU COMPLAINT
17 ABOUT WEGENER?

18 A. SURE. THAT'S NOT VENGEFUL. YOU KNOW, YOU STAND
19 UP FOR CONSUMER RIGHTS. WHEN A BUSINESS DOESN'T
20 DO THEIR JOB AND THEY REFUSE TO DO THEIR JOB, YOU
21 TAKE THEM TO THE BETTER BUSINESS BUREAU.

22 Q. WHAT WAS THIS \$400? WHY WERE YOU OWED \$400 BY
23 THEM?

24 A. IT WAS OVER A PROCESSOR. AND IF YOU READ THE
25 COMMENTS, THAT'S HAPPENED MORE THAN TEN OR 15

1 TIMES WITH DIFFERENT OTHER PEOPLE. IF YOU READ
2 ALL AROUND THE INTERNET, THERE'S WHOLE OTHER
3 WEBSITES ALL ABOUT DAVID WEGENER AND HOW HE'S
4 CHEATED THEM. IN FACT, THERE'S A WHOLE WEBSITE
5 JUST DEDICATED JUST TO HIM.

6 Q. BUT IT'S YOUR TESTIMONY THEN, THAT IF YOU PUT ON
7 YOUR WEBSITE FOR THE WORLD TO LOOK AT, THAT THEY
8 OUGHT TO TAKE A MOLATOV COCKTAIL AND GO VISIT MR.
9 WEGENER?

10 A. THAT IS NOT MY STATEMENT AT ALL.

11 Q. IT'S NOT? THAT'S NOT WHAT YOU WROTE?

12 A. THAT IS WHAT I WROTE. I WROTE IT AS SATIRE.

13 (EXHIBIT NO. 15 MARKED [EXCERPTS FROM EBAY]; ATTACHED)
14 EXAMINATION RESUMED BY MR. ELWELL:

15 Q. I'LL SHOW YOU EXHIBIT 15 AND ASK YOU IF YOU
16 RECOGNIZE THIS DOCUMENT. IT'S A COLLECTION OF
17 PRINTED POSTINGS FROM AN EBAY FORUM.

18 A. YES.

19 Q. AND I'LL ASK YOU IF YOU'VE SEEN THIS BEFORE.

20 A. YES, AND I'M FAMILIAR THAT THIS HAS BEEN TAKEN
21 DOWN FROM EBAY.

22 Q. DO YOU KNOW WHY THAT WAS?

23 A. I DO NOT KNOW. I HAVE A SUSPICION THAT IT WAS
24 YOURS, YOUR DOING.

25 Q. WHY IS THAT?

1 A. IT DOESN'T -- THINGS DON'T GET REMOVED FROM EBAY
2 UNLESS YOU HAVE A COURT ORDER OR AN ATTORNEY. AND
3 THEY CAN'T ANSWER THAT QUESTION UNLESS I SUBPOENA
4 THEM.

5 Q. THIS IS ANOTHER ONE OF YOUR GOOD FAITH
6 SUPPOSITIONS?

7 A. THERE'S GOT TO BE A REASON WHY IT WAS TAKEN OFF.

8 Q. WHY WOULD WE WANT THIS TAKEN OFF? YOU LOOK LIKE
9 AN ASS IN THIS PIECE. WHY WOULD I NOT WANT THIS
10 TO STAY ON?

11 A. BUT I DON'T KNOW WHETHER THAT'S -- YOU KNOW,
12 THAT'S SOMEBODY RELATED TO BIDZIRK RESPONDING
13 THROUGH SOME OF THESE OR NOT.

14 Q. LET'S JUST START AT THE BEGINNING HERE. YOU SEE
15 HOW THESE ARE ALL BORDERED BY LITTLE SQUARES.
16 THIS FIRST SQUARE --

17 A. YES.

18 Q. -- IT SAYS, "A TERRIBLE EBAY DROP-OFF STORE
19 EXPERIENCE," AND IT'S POSTED BY SOMEBODY CALLED
20 WHISPERSTG. DO YOU SEE THAT?

21 A. YES.

22 Q. IS THAT AN ALTERNATE IDENTITY THAT YOU USE?

23 A. NO, IT'S NOT. BUT SOMEBODY TRIED TO MAKE THAT
24 CONNECTION. I'VE HAD THIS STORY PRINTED -- OR
25 THIS FORUM PRINTED OUT AS WELL. SOMEBODY TRIED TO

1 MAKE THAT CONNECTION DOWN AT THE BOTTOM. AND
2 BROWSATORIUM, WHICH IS THIS ONE, WHO IS SOMEBODY
3 THAT'S AGAINST ME, HAD A BAD EXPERIENCE WITH ME ON
4 EBAY. ARNOLD TRADING IS RELATED TO BROWSATORIUM,
5 AND I CAN PROVE ALL OF THAT. I CAN PROVE THAT I
6 HAD A BAD EXPERIENCE. THEY ACTUALLY BOUGHT
7 SOMETHING FROM ME, BROWSATORIUM, AND HAD A BAD
8 EXPERIENCE WITH ME.

9 Q. WHICH WAS WHAT?

10 A. THEY BOUGHT A -- I THINK AN ETHERNET ADAPTER FROM
11 ME, AND IT WAS A BAD EXPERIENCE. IT RESULTED IN A
12 PAYPAL DISPUTE AND --

13 Q. WHEN YOU SAY IT WAS A BAD EXPERIENCE, WHAT? IT
14 WAS BROKEN? IT DIDN'T GET SHIPPED ON TIME? WHAT
15 HAPPENED?

16 A. THEY COULDN'T MAKE IT WORK. AND I KNEW THAT IT
17 WORKED. AND I SHIPPED THEM ANOTHER ONE, AND THEY
18 SAID IT STILL DIDN'T WORK. AND I SELL, YOU KNOW,
19 A COUPLE DOZEN OF THOSE A MONTH. AND I KNOW THAT
20 IT WORKS. IF I SHIPPED THEM ANOTHER ONE AND I
21 TESTED IT, I KNOW THAT IT WORKS. AND ARNOLD
22 TRADING IS ACTUALLY RELATED TO THEM. IF YOU LOOK
23 AT THEIR ID'S, THEY'RE IN THE SAME GENERAL AREA.
24 YOU KNOW, I KNOW THERE'S A WHOLE BUNCH OF PEOPLE
25 ON EBAY, BUT IT'S KIND OF FUNNY THAT THOSE TWO

1 WERE GOING BACK AND FORTH WITH EACH OTHER.

2 Q. BUT YOU DON'T KNOW THAT THEY'RE RELATED. YOU JUST
3 ARE AWARE THAT THEY'RE PHYSICALLY CLOSE TOGETHER.

4 A. I DON'T KNOW THAT 100 PERCENT, BUT BROWSATORIUM
5 AND ARNOLD TRADING ALSO SELL THE SAME GENERAL KIND
6 OF ITEMS. SO THERE'S A LOT OF CONNECTIONS THAT
7 COULD BE MADE THERE, TOO.

8 Q. SO YOU PRESUME THAT THEY'RE SOMETHING OTHER THAN
9 COMPETITORS?

10 A. YES. AND SOME OF THESE ARE ALSO EBAY DROP-OFF
11 STORES THAT ARE COMPLAINING. AND THEY DON'T WANT
12 ANYTHING BAD ABOUT THEM, ABOUT EBAY DROP-OFF
13 STORES ON THE INTERNET.

14 Q. HOW IS IT THAT YOU CAME TO BE AWARE OF THIS
15 MESSAGE BOARD BEFORE YOU --

16 A. OH, THIS WAS IN A SEARCH FOR EBAY DROP-OFF STORES.
17 AND IF YOU LOOK, LIKE ARNOLD TRADING IS SAYING,
18 "BUT BASICALLY BIASED AGAINST A SELLER ASSISTANT,
19 TRADING ASSISTANT." WELL, I MEAN, THAT'S
20 OBVIOUSLY MEANING THAT HE'S A TRADING ASSISTANT OR
21 SELLER ASSISTANT --

22 Q. WHY?

23 A. -- BECAUSE THIS WAS A TRADING ASSISTANT BOARD, FOR
24 ONE. IF YOU LOOK UP HERE AT THE TOP, IT'S A
25 TRADING ASSISTANT BOARD. SO EVERYBODY THAT'S

1 GOING TO BE RESPONDING TO THIS IS GOING TO BE
2 BIASED AGAINST THAT ARTICLE. AND AGAIN, I WILL
3 STATE TO YOU, ALL YOU HAVE TO DO IS GO TO A FORUM
4 ON BILLOREILLY.COM AND FIND OUT ALL THE STUFF THAT
5 HE GETS CRITICIZED ABOUT. EVEN IF HE SAYS
6 SOMETHING THAT IS FORGIVING TO THE DEMOCRATIC
7 PARTY, THEY STILL JUMP ALL OVER HIM. SO, I MEAN,
8 THIS HAS NOTHING TO DO WITH THE CREDIBILITY OF MY
9 ARTICLE, BECAUSE SOME OTHER PEOPLE ARE TALKING
10 ABOUT IT. BECAUSE I DELETE ALL COMMENTS THAT COME
11 IN ON THAT BIDZIRK ARTICLE, PERIOD. I DELETE THEM
12 ALL, EVEN IF THEY'RE POSITIVE.

13 Q. WHY?

14 A. BECAUSE I DON'T WANT ANY DISCUSSION ABOUT IT.

15 Q. WHY IS THAT?

16 A. I JUST DON'T WANT ANY DISCUSSION ABOUT IT.

17 Q. WHY?

18 A. MY DECISION.

19 Q. I'M ASKING YOU WHY.

20 A. I'M TELLING YOU WHY.

21 Q. NO, YOU'RE NOT. I MEAN YOU'RE SAYING BECAUSE,
22 ESSENTIALLY, WHICH IS NOT A REASON. WHY DO YOU
23 NOT WANT IT DISCUSSED?

24 A. MY REASON IS I JUST DON'T WANT A DISCUSSION ABOUT
25 IT. I'VE DISCUSSED IT ENOUGH. AND

1 AMITHEONLYONE.ORG DISCUSSES IT A HECK OF A LOT
2 MORE THAN I DO, AND I WOULD RATHER THE DISCUSSION
3 BE THERE IN THEIR FORUMS.

4 Q. YOU SEE ON THE SECOND PAGE OF THIS THERE'S
5 SOMEBODY THAT'S CALLED LEGALPRO-CDS. IT SAYS, "I
6 AM EMBARRASSED TO SAY THAT I STUCK IT OUT FOR TWO-
7 THIRDS OF THE QUOTE, "ARTICLE," END QUOTE. I'LL
8 SAVE OTHERS THE TROUBLE."

9 A. OKAY.

10 Q. "THIS AUTHOR/LEGAL SCHOLAR/EBAY GURU/COMPUTER
11 HARDWARE EXPERT/ADVERTISING EXECUTIVE, AND ALL
12 AROUND GOOD GUY HIRES A TA TO SELL A WAREHOUSE
13 FULL OF GOODS AND COMPLAINS ABOUT EVERY ASPECT OF
14 THE OPERATION, INCLUDING PERSONAL TRAITS OF ALL
15 INVOLVED. IN THE END, HE COULD HAVE DONE IT ALL
16 BETTER, FASTER, SMARTER, AND MADE MORE MONEY, BUT
17 HE THOUGHT HIS TIME WOULD BE BETTER SPENT
18 CRITIQUING IN A BLOVIATING BLOG."

19 A. OKAY, AND WHAT AUTHORITY DOES HE HAVE ON MY
20 ARTICLES? AND YOU READ IT WRONG, TOO. HE HAS
21 "FATSER" INSTEAD OF "FASTER".

22 Q. WELL, HE DID MAKE A TYPO. I STAND CORRECTED.

23 A. SO WHAT AUTHORITY DOES THAT HAVE? AND HOW DO I
24 KNOW THAT WASN'T TY OR SOMEBODY AT BIDZIRK, OR
25 SOME --

1 Q. CAN'T YOU GO LOOK UP THE PROFILE?

2 A. I'M SURE YOU CAN.

3 Q. WHY WOULD IT NECESSARILY BE THE CASE THAT SOMEBODY
4 WHO'S CRITICAL OF YOU WOULD HAVE TO, FOR INSTANCE,
5 BE SUING YOU OR --

6 A. NO, THEY DON'T HAVE TO BE.

7 Q. -- BE AWARE OF YOU PERSONALLY AND --

8 A. THEY DON'T HAVE TO BE. BUT THIS GUY IS OBVIOUSLY
9 NOT AN AUTHOR HIMSELF, OR HE -- YOU KNOW.

10 Q. WHY IS THAT?

11 A. WELL, HE DID -- YOU KNOW, HE MADE SOME TYPOS. AND
12 THAT FIRST -- IF YOU CAN TELL ME THAT THAT FIRST
13 THING IS A SENTENCE, THEN -- "SPECIAL BONUS. HE
14 TELLS CUSTOMERS HOW TO PROTECT THEMSELVES SINCE
15 THEY'RE NOT AUTHORS, LEGAL SCHOLARS, HARDWARE," --
16 AND THAT'S EXACTLY WHAT THE COURT SAID THAT WAS IN
17 MY FAVOR, BY THE WAY.

18 Q. WHAT?

19 A. THAT SAID, "SPECIAL BONUS. HE TELLS CUSTOMERS HOW
20 TO PROTECT THEMSELVES." I GAVE -- IT SAYS,
21 "BECAUSE SMITH GAVE A LIST OF WAYS TO USE EBAY
22 SELLERS, I FIND THIS ARTICLE NEWS AND NEWS
23 COMMENTARY AND AFFIRMATIVE."

24 Q. YOU DON'T KNOW WHO LEGALPRO-CDS IS? YOU NEVER
25 POSTED WITH THAT PERSON BEFORE?

1 A. NO, I DON'T KNOW WHO THAT IS.

2 Q. DO YOU SEE THE NEXT PERSON ON PAGE THREE? TOMART,
3 T-O-M-A-R-T, 2000?

4 A. OKAY.

5 Q. IT SAYS, "WHILE I SHOULD HAVE JUST STUCK TO THE
6 SUMMARY PROVIDED ABOVE FOR A JOURNALIST/GURU/GEEK,
7 WHATEVER, HE SURE WRITES LIKE A PSYCHOTIC. LIKED
8 THE DITTOHEAD LEGAL DIGRESSIONS. IF THIS GUY'S A
9 JOURNALIST, I'D LIKE TO MEET HIS EDITOR."

10 A. OKAY, THESE ARE NOT PROFESSIONAL OPINIONS.

11 Q. "THE MAN MUST BE AS SERENE AS THE DALAI LAMA.
12 MOST FASCINATING WAS THE ACCOUNT OF THE MEETING
13 WHERE HE TOLD HIS ERSTWHILE TRADING ASSISTANT HOW
14 HE SHOULD RUN HIS BUSINESS."

15 A. OKAY. I DON'T KNOW WHETHER THAT WAS YOU OR TY, OR
16 SOMEBODY THAT WORKS AT BIDZIRK, OR A FAMILY
17 MEMBER, OR SOMEBODY WITH TY, OR A FAMILY MEMBER OF
18 JILL'S.

19 Q. IT WASN'T ANY OF US. DO YOU KNOW WHO THIS PERSON
20 IS?

21 A. BUT YOU DON'T KNOW WHO IT IS EITHER. SO WHY DO
22 THESE OPINIONS MATTER? IF THESE OPINIONS EXIST ON
23 EVERY WEBSITE OUT THERE, THAT ARE CRITICAL OF
24 EVERY ARTICLE OF EVERYTHING ON THE INTERNET, WHY
25 DO THESE MATTER IN ANY WAY? AND BESIDES, THIS HAS

1 BEEN REMOVED FROM EBAY.

2 Q. BUT YOU DON'T KNOW WHY THAT IS?

3 A. I IMAGINE IT'S BECAUSE IT'S IN LITIGATION AND
4 SOMEBODY ALERTED THEM TO THAT FACT. OR MAYBE EBAY
5 THEMSELVES WENT TO THE ARTICLE AND FOUND THAT IT
6 WAS IN LITIGATION AND TOOK IT OFF. I DON'T KNOW
7 AND EITHER DO YOU, UNLESS YOU DID IT.

8 Q. BUT YOU'RE NOT CONTENDING THAT BIDZIRK TOOK THE
9 ARTICLE DOWN?

10 A. I'M NOT SAYING THAT THEY DIDN'T. I'M NOT SAYING
11 THAT YOU DIDN'T HAVE ANY INVOLVEMENT IN IT, NO. I
12 MEAN I'M SAYING THAT YOU COULD HAVE, BUT I DON'T
13 KNOW. THESE ARE NOT PROFESSIONAL OPINIONS.

14 Q. WHY ARE THEY NOT PROFESSIONAL OPINIONS?

15 A. THEY'RE JUST FORUM PEOPLE. THEY'RE ONE OF THE
16 HUNDRED MILLION PEOPLE THAT ARE ON EBAY.

17 Q. AND WHY IS THAT DIFFERENT THAN YOUR OPINION?

18 A. I'VE BEEN ON EBAY TEN YEARS.

19 Q. HOW DO YOU KNOW NONE OF THESE PEOPLE HAVE?

20 A. A HUNDRED AND 12 FEEDBACK? NO. TWO FEEDBACK?
21 NO. TWENTY-NINE FEEDBACK? NO.

22 Q. WELL, HOW ABOUT THE GUY ON PAGE TWO THAT HAS 2,776
23 FEEDBACKS? HOW ABOUT THE GUY ON PAGE THREE THAT
24 HAS 2,779 FEEDBACK?

25 A. OKAY.

1 Q. THAT'S MORE THAN YOU HAVE. YOURS HAS 2,641,
2 RIGHT? YOU'RE THE APPLE PEOPLE, AREN'T YOU?

3 A. OKAY, YES.

4 Q. SO BASICALLY THE GIST OF SEVERAL OF THESE POSTS --

5 A. AND HOW DID YOU FIND THIS?

6 Q. CAN I FINISH MY QUESTION, PLEASE?

7 A. BECAUSE YOU MUST HAVE BEEN LOOKING FOR IT, OR YOU
8 POSTED IT YOURSELF.

9 Q. CAN I FINISH MY QUESTION?

10 A. YES.

11 Q. THE GIST OF SEVERAL OF THESE POSTS IS THAT
12 BASICALLY YOU ASKED SOMEBODY ELSE TO DO SOMETHING
13 FOR YOU, AND THEN TURNED AROUND AND CRITICIZED
14 EVERY SINGLE ASPECT OF HOW THEY DID IT.

15 A. OKAY.

16 Q. AND DECIDED TO PUBLISH SOMETHING ABOUT HOW YOU
17 COULD HAVE DONE IT A LOT BETTER.

18 A. YEAH, I GOT CHEATED. BUT I DIDN'T -- I MEAN IT'S
19 OBVIOUS THAT I DIDN'T DO IT OUT OF REVENGE, AND
20 THAT'S WHAT THE COURT HAS SAID.

21 Q. WHY IS IT OBVIOUS THAT YOU DIDN'T DO IT OUT OF
22 REVENGE?

23 A. BECAUSE I GAVE A CHECK LIST FOR PEOPLE TO USE EBAY
24 DROP-OFF STORES. AND BESIDES, BIDZIRK IS DOING
25 BETTER THAN THEY'VE EVER DONE AS FAR AS I CAN SEE

1 ON EBAY.

2 Q. I THOUGHT THAT YOU INDICATED THAT THEY WERE IN NO
3 WAY PROFITABLE BASED ON YOUR KNOWLEDGE OF WHAT
4 THEY MUST DO AS FAR AS THEIR BUSINESS GOAL.

5 A. I DIDN'T SAY THEY WERE PROFITABLE. I JUST SAID
6 THAT THEY'RE -- BY THEIR EBAY SALES, THEY'RE
7 SELLING MORE THAN THEY'VE EVER SOLD.

8 Q. BUT IS IT NOT YOUR TESTIMONY TODAY THAT YOU'RE
9 SAYING BIDZIRK HAS NOT SOLD ENOUGH TO COVER THEIR
10 OVERHEAD?

11 A. THE DROP-OFF MODEL IS FLAWED.

12 Q. ARE YOU SAYING THAT BIDZIRK IS NOT SELLING ENOUGH
13 TO COVER ITS OVERHEAD?

14 A. I'M NOT SAYING THAT. FROM MY OBSERVATION AND MY
15 MARKET RESEARCH ON EBAY DROP-OFF STORES, AND FROM
16 MY CONSULTATIONS WITH THE ATTORNEY FOR
17 AMITHEONLYONE.ORG, AND MY -- AND YOU CAN CATCH ME
18 ON THE SEMANTICS OF WHETHER I'M SAYING THAT RIGHT.
19 BUT I'VE HAD DISCUSSIONS WITH THE ATTORNEY FOR
20 AMITHEONLYONE.ORG WHO IS SUING ALL THE I SOLD IT
21 CHAIN. IT'S NOT --

22 Q. WHO IS THAT ATTORNEY?

23 A. A GUY OUT OF ATLANTA. I CAN'T REMEMBER HIS NAME
24 EITHER. SORRY. I WILL GET THAT INFORMATION FOR
25 YOU. IF YOU CAN SEND ME ANY INFORMATION THAT YOU

1 WANT THAT I COULD NOT REMEMBER THE INFORMATION, I
2 WILL GET IT FOR YOU.

3 Q. YOU SAY IN HERE ON SEPTEMBER THE 1ST, THIS IS PAGE
4 NINE, YOUR POST, IT SAYS, "APPARENTLY NONE OF YOU
5 ACTUALLY READ THE ARTICLE, AND IT SEEMS SOME OF
6 YOU ARE TROLLING."

7 A. YES.

8 Q. THE WORD "TROLLING", JUST FOR THE RECORD, MEANS
9 WHAT?

10 A. SOMEONE WHO IS DIRECTLY RELATED TO THE ISSUE AND
11 IS BIASED AGAINST THE ISSUE. I MEAN THAT'S WHAT
12 THE DEFINITION OF A TROLL IS. WHEN SOMEBODY
13 TROLLS LIKE A MAC ARTICLE THAT I DO, THAT I --
14 WHERE IF I CRITICIZE APPLE COMPUTER, YOU ALWAYS
15 GET SOMEBODY THAT COMES IN AND SAYS, "HOW COULD
16 YOU SAY SOMETHING BAD ABOUT APPLE COMPUTER?"
17 THESE ARE TRADING ASSISTANTS, MOST OF THEM. AND
18 THEY'RE ALL BIASED AS TRADING ASSISTANTS. BUT,
19 YOU KNOW, I MEAN, THEY HAVE THE RIGHT TO CRITICIZE
20 MY ARTICLE.

21 Q. ARE YOU NOT DOING THE SAME THING WHEN YOU JUMP IN
22 AND SAY, "I'M THE AUTHOR AND YOU GUYS DON'T
23 UNDERSTAND MY ARTICLE"?

24 A. SURE I AM.

25 Q. ARE YOU TROLLING AS WELL?

1 A. SURE I AM. THERE'S NOTHING WRONG WITH THAT. BUT,
2 YOU KNOW, AGAIN, HOW AM I TO KNOW THAT, YOU KNOW,
3 YOU OR SOMEBODY RELATED TO BIDZIRK WASN'T THE ONE
4 THAT STARTED THAT?

5 Q. ASSUME FOR THE SAKE OF MY QUESTION THAT THAT ISN'T
6 THE CASE. NOW WHAT DIFFERENCE DOES THAT MAKE?

7 A. IT MAKES A BIG DIFFERENCE IF YOU STARTED THE
8 ARTICLE, IF YOU STARTED THE FORUM.

9 Q. THIS, WHERE IT SAYS, "ANYONE SEE THIS ARTICLE"?

10 A. YEAH, MAKES A BIG DIFFERENCE.

11 Q. WHAT BENEFIT WOULD MY CLIENT SEE BY STARTING A
12 FORUM ABOUT THAT?

13 A. WELL, FOR ONE, IT -- YOU'RE RIGHT, IT IS
14 SUSPICIOUS THAT SOMEBODY STARTED UP A BRAND NEW
15 ID. THAT WAS A BRAND NEW ID THAT WAS LITERALLY
16 MAYBE A MONTH OLD, THAT WHISPERSTG. AND THAT'S
17 VERY, VERY SUSPICIOUS. OR THAT MIGHT HAVE JUST
18 BEEN A TRADING ASSISTANT THAT DIDN'T LIKE MY
19 ARTICLE EITHER AND STARTED UP AN EBAY ID SO THEY
20 COULD START THIS FORUM. I MEAN YOU CAN SUBPOENA
21 EBAY AND GET THE IP ADDRESS THAT STARTED UP ALL
22 THESE ID'S. SO, I MEAN, THAT'S THE WAY YOU'D FIND
23 THAT.

24 Q. YOU SAY AT THE BOTTOM OF YOUR POST, ON PAGE NINE,
25 "THANKS FOR ALL YOUR CRITIQUE AND COMMENTS, NO

1 MATTER HOW MANY OF THEM ARE VERY SUSPICIOUSLY
2 ASININE."

3 A. YES.

4 Q. WHY DO YOU SAY THAT?

5 A. I THINK THAT THIS FORUM IS VERY SUSPICIOUS. AND I
6 ALSO THINK IT'S VERY SUSPICIOUS THAT SOMEONE'S HAD
7 NO RELATION TO THE WHISPERS MOTIF EITHER. I JUST
8 THINK THAT'S REALLY SUSPICIOUS. AND THAT MADE ME
9 THINK THAT EITHER THEY WERE BIASED IN THEIR
10 REPORTING, OR IT WAS SOMEBODY RELATED TO BIDZIRK,
11 OR YOU.

12 Q. DO YOU THINK THAT IT'S INTERESTING THAT IN YOUR
13 OWN BLOG YOU MISUSED THE WORD "MOTIF" ABOUT TWO OR
14 THREE DAYS BEFORE THIS STARTED?

15 A. OKAY.

16 Q. YOU DON'T THINK THAT'S AN INTERESTING COINCIDENCE,
17 TOO?

18 A. WHAT I THINK IS INTERESTING, IS THAT YOU
19 APPARENTLY COMMENT ON MY BLOG REGULARLY ABOUT
20 THINGS LIKE THAT.

21 Q. WHY DO YOU THINK THAT?

22 A. IF THAT -- I MEAN I CAN FIND YOUR IP ADDRESS, I
23 GUESS.

24 Q. LOOK ALL YOU WANT.

25 A. BUT SOMEBODY IS --

1 Q. HAVE YOU FOUND MY IP ADDRESS?

2 A. I HAVEN'T LOOKED.

3 Q. WELL, I'LL REPRESENT TO YOU THAT YOU WON'T SEE IT
4 AS A COMMENT ON YOUR BLOG.

5 A. OKAY.

6 Q. SO I DON'T KNOW WHAT SORT OF COMMENTS YOU ARE
7 ATTRIBUTING TO ME.

8 A. I'LL TAKE YOUR WORD.

9 Q. WHAT SORT OF COMMENTS ARE YOU ATTRIBUTING TO ME
10 THAT ARE ON YOUR BLOG?

11 A. YOU KNOW, EVERY NOW AND THEN THERE'S A LITTLE
12 CRUMMY COMMENT.

13 Q. THEY'RE ALL CRUMMY IF THEY'RE CRITICAL OF YOU,
14 RIGHT?

15 A. NO. I RESPOND TO A LOT OF CRITICAL COMMENTS.

16 Q. SO TELL ME AGAIN WHY --

17 A. A LOT OF THEM DO SEEM SET-UPS, THOUGH.

18 Q. OTHER THAN BEING SUSPICIOUS, WHAT MAKES THE OTHER
19 PEOPLE'S COMMENTS ASININE ON THIS FORUM?

20 A. THEY'RE BIASED. THEY'RE ALL TRADING ASSISTANTS,
21 WHICH MEANS THAT THEY'RE EBAY DROP-OFF OR
22 SOMETHING SIMILAR. THAT'S WHAT A TRADING
23 ASSISTANT DOES. AND THEY'RE ALL BIASED. AND
24 WHAT, YOU KNOW, MY CRITIQUE OF WHAT MY STORY WOULD
25 BE, THAT SOUNDS LIKE A REALLY SERIOUSLY BAD ISSUE.

1 WHAT CAN WE DO TO REMEDY THAT AS AN EBAY DROP-OFF?
2 I MEAN THAT'S A GOOD CRITICISM. AND, YOU KNOW, I
3 WILL ADMIT I THINK IT'S TOO LONG. I THINK THE
4 STORY IS TOO LONG. BUT IT HAD TO BE DETAILED IN
5 ORDER TO GIVE ALL THE DETAILS OF HOW I WAS
6 THOROUGHLY CHEATED.

7 Q. WHEN DID YOU MAKE THE DECISION IN YOUR MIND, I'M
8 GOING TO WRITE A STORY ABOUT THIS EXPERIENCE THAT
9 I HAD?

10 A. YOU IMPLY MALICE IN THAT.

11 Q. NO, WITH BIDZIRK. I'M NOT TRYING TO IMPLY MALICE
12 AT ALL. WHEN DID YOU MAKE THE DECISION I'M GOING
13 TO DO A FEATURE ABOUT THIS ON MY BLOG?

14 A. YOU'RE -- AGAIN, YOUR TONE IMPLIES MALICE. I
15 DECIDED THAT AS A PART OF MY BECOMING
16 FIXYOURTHINKING.COM, WHICH WAS TO MOVE INTO ACTUAL
17 MAKING MONEY ON MY BLOG, IF I COULD, WOULD BE TO
18 START A FEATURE STORY ONCE A MONTH OR ONCE A
19 QUARTER. AND THIS WAS A GOOD PERSONAL EXPERIENCE.
20 I HAVE USED PERSONAL EXPERIENCES FOR A VERY LONG
21 TIME IN DISCUSSING STORIES ON MY BLOG. AND I
22 THOUGHT THIS WOULD BE A GOOD PERSONAL EXPERIENCE
23 SO THAT PEOPLE WOULDN'T GET INTO THE SAME ISSUE
24 THAT I WOULD, AND THAT THEY WOULD HAVE A POSITIVE
25 EXPERIENCE WITH EBAY DROP-OFFS.

1 Q. WHEN DID YOU ARRIVE AT THAT CONCLUSION, THAT YOU
2 WERE GOING TO WRITE ABOUT IT?

3 A. A COUPLE DAYS AFTER THE LAST MEETING WITH TY.

4 Q. SO IT'S THE CASE THAT AT THE TIME YOU BEGAN THE
5 RELATIONSHIP WITH MR. SCHMIDT, YOUR PURPOSE WAS
6 JUST TO SELL INVENTORY?

7 A. THAT IS CORRECT.

8 Q. AND MAKE MONEY, RIGHT?

9 A. YES, TO CONSIGN THE INVENTORY TO HIM AND GET AT
10 LEAST HALF OF THE EBAY VALUE.

11 Q. ON PAGE 11 OF THIS FORUM, THIS LEGALPRO-CDS ALSO
12 SAYS, "YOU COME IN HERE IN THE SPIRIT OF SELF-
13 PROMOTION, LINKING TO SOME ARTICLE, PRETENDING
14 THAT IT IS WRITTEN BY A THIRD PARTY."

15 A. YES, I SAW THAT TOO.

16 Q. "THE ARTICLE IS AN 8,000-PLUS WORD, POORLY
17 CONSTRUCTED DIATRIBE WHERE YOU GO BACK AND FORTH
18 BETWEEN CONGRATULATING YOURSELF FOR BEING SO
19 SMART, PARENTHESIS, I WON'T WASTE THE BOARD'S TIME
20 WITH DECONSTRUCTING THE LANHAM ACT, QUOTE
21 "ANALYSIS", END QUOTE, AND DENIGRATING THE SELLER
22 BOTH PERSONALLY AND PROFESSIONALLY." THEN, "YOU
23 LIMP BACK IN UNDER YOUR REAL NAME AND DEFEND THE
24 ARTICLE AS AN ATTEMPT TO EDUCATE WOULD-BE
25 CUSTOMERS."

1 A. OKAY.

2 Q. LET ME JUST GET THIS STRAIGHT.

3 A. LEGALPRO-CDS IS OBVIOUSLY A NEWLY REGISTERED ID,
4 AND IT COULD BE ANOTHER ONE OF THESE PEOPLE ON THE
5 BOARD. IF YOU ALSO LOOK, THIS FORUM WAS STARTED
6 ON AUGUST 20TH. AND THAT WAS -- LEGALPRO-CDS --

7 Q. THE POST I JUST READ IS POSTED SEPTEMBER 1ST.

8 A. YES, BUT WHAT I'M SAYING IS THAT WAS SIGNIFICANTLY
9 AFTER --

10 Q. TEN DAYS AFTER, RIGHT?

11 A. YES. I HAVEN'T DONE THE RESEARCH TO SEE WHO
12 POSTED THESE. AGAIN, YOU KNOW, IT COULD HAVE BEEN
13 YOU, IT COULD HAVE BEEN TY, COULD HAVE BEEN JOHN,
14 COULD HAVE BEEN TAMARA, COULD HAVE BEEN ANYBODY
15 THAT DISLIKED ME. COULD HAVE BEEN BILL PALMER,
16 FOR ALL I CARE.

17 Q. WHAT OTHER WEBSITES ARE YOU AWARE OF WHERE THE
18 ARTICLE THAT YOU WROTE HAS BEEN DISCUSSED?

19 A. AMITHEONLYONE.ORG.

20 Q. AND WHAT IS THE PURPOSE OF THAT WEBSITE?

21 A. THEY ARE IN A CLASS-ACTION. THE OWNERS OF THAT
22 WEBSITE ARE IN A CLASS-ACTION LAWSUIT AGAINST THE
23 I SOLD IT CHAIN AND THE AUCTION DROP CHAIN.

24 Q. DO YOU KNOW WHAT THE BASIS OF THAT CLAIM IS?

25 A. FALSE FRANCHISING CONTRACTS, YOU KNOW, CONTRACT

1 DISPUTES AMONG FRANCHISERS.

2 Q. THIS IS PEOPLE THAT OWN I SOLD IT FRANCHISES?

3 A. THEY -- WELL, THEY WERE. THEY OWN AN I SOLD IT IN
4 ATLANTA, AND FOUND OUT THAT, YOU KNOW, YOU HAD TO
5 MAKE AN UNREASONABLE AMOUNT OF MONEY IN ORDER TO
6 EVEN KEEP IT AFLOAT. AND THAT, YOU KNOW, THEIR
7 STATISTICS ON THEIR WEBSITE INDICATE THAT ROUGHLY
8 TWO A DAY GO OUT OF BUSINESS.

9 Q. WHAT OTHER WEBSITES HAVE DISCUSSED YOUR ARTICLE
10 THAT YOU'RE AWARE OF?

11 A. THE STRATEGIC OUTLOOK INSTITUTE. THE TECHNOLOGY
12 LAW BLOG. I CAN'T THINK OF ANY OTHERS.

13 Q. ARE YOU INVOLVED IN ANY OTHER LITIGATION NOW?

14 A. NO.

15 Q. HAVE YOU EVER SUED ANYONE PREVIOUSLY?

16 A. WHAT DO YOU MEAN BY THAT?

17 Q. HAVE YOU EVER FILED A LAWSUIT?

18 A. YES.

19 Q. WHEN DID YOU DO THAT?

20 A. THREE YEARS AGO.

21 Q. AND WHO WAS IT AGAINST?

22 A. MY CONDO COMPLEX.

23 Q. IS THIS RELATED TO THE POT SMOKING AND ALL THAT,
24 THAT YOU REFERENCED AT THE LAST DEPOSITION?

25 A. NO.

1 Q. WHAT WAS IT ABOUT?

2 A. IT WAS ABOUT A WATER LEAK IN MY CONDO THAT THEY
3 WANTED ME TO PAY FOR.

4 Q. WHAT WAS THE RESULT OF THAT CASE?

5 A. IT GOT DISMISSED. I GOT -- I GUESS THAT'S IT.

6 Q. IT WAS DISMISSED?

7 A. WELL, IT WAS RULED THAT IT WAS NOBODY'S ISSUE.

8 Q. YOU LOST?

9 A. NO, I DIDN'T LOSE. THE CONDO COMPLEX HAD TO PAY.

10 Q. SO THEY PAID FOR THE LEAK, AND YOU DID NOT?

11 A. RIGHT. IT FLOODED THE CONDO BENEATH ME, AND IT
12 WAS IN THE WALLS. SO IT WAS THEIR FAULT,
13 ACCORDING TO THE REGIME RULES.

14 Q. THIS IS THE CONDOMINIUM THAT YOU LIVE IN NOW?

15 A. YES.

16 Q. AND YOU INDICATED AT YOUR LAST DEPOSITION THAT YOU
17 WERE THE OWNER OF THAT CONDOMINIUM; IS THAT RIGHT?

18 A. AND THAT WAS NOT CORRECT.

19 Q. WHY IS IT NOT CORRECT?

20 A. BECAUSE IT HAS A LIEN ON IT.

21 Q. DO YOU UNDERSTAND THAT I CAN, OR YOU CAN, OWN
22 SOMETHING THAT HAS A LIEN AGAINST IT AND THAT
23 DOESN'T NECESSARILY DEPRIVE YOU OF THE OWNERSHIP?
24 YOU STILL HAVE IT.

25 A. BUT SOMEONE HAS A LIEN ON IT, SO --

1 Q. WELL, WE'RE TALKING ABOUT OWNERSHIP OF THE CONDO.
2 THE DEED HAS YOUR NAME ON IT? IT'S NOT OWNED BY
3 YOUR FATHER?

4 A. THE DEED THAT HE HAS -- THE COPY OF THE DEED THAT
5 HE HAS HAS HIM AS THE FIRST LIENHOLDER.

6 Q. WHO IS THE GRANTEE ON THAT DEED? WHEN THE
7 CONDOMINIUM WAS PURCHASED, IT WAS DEEDED TO YOU;
8 IS THAT RIGHT?

9 A. I GUESS. I DON'T KNOW. I DON'T HOLD THE DEED. I
10 LIVE THERE AND I GIVE MY FATHER \$500 A MONTH.

11 Q. AND HAVE YOU RECEIVED TAX BILLS FOR PROPERTY TAXES
12 AT THAT CONDO?

13 A. YES, THOSE ARE ESCROWED.

14 Q. BUT THE TAX BILLS, DO THEY COME TO YOU ADDRESSED
15 TO YOU, OR TO YOUR FATHER?

16 A. TO MY FATHER.

17 Q. AT YOUR HOUSE? AT YOUR CONDO?

18 A. NO, AT 814 BELL SHOALS ROAD.

19 Q. WHERE IS THAT?

20 A. SIX MILE.

21 Q. SO IF I LOOKED UP YOUR CONDO ADDRESS IN THE
22 GREENVILLE COUNTY TAX ROLLS AND YOU WERE LISTED AS
23 THE ONLY OWNER, THAT WOULD BE INCORRECT SOMEHOW?

24 A. HE -- I MEAN, AS FAR AS I KNOW, HE GETS THE TAX
25 BILL. I MAY GET IT. I DON'T KNOW. I CAN'T

1 REMEMBER THAT.

2 Q. YOU DON'T KNOW WHO THE RECORD OWNER OF YOUR
3 CONDOMINIUM IS, WHETHER IT'S YOU --

4 A. I DO NOT.

5 Q. -- OR YOUR FATHER?

6 A. I DO NOT. I MEAN THAT'S --

7 Q. SO IT'S YOUR TESTIMONY THAT YOU DON'T KNOW, NOT
8 THAT YOU ARE NOT THE OWNER?

9 A. I HONESTLY DO NOT KNOW. BUT I KNOW THAT HE'S TOLD
10 ME THAT HE HAS A LIEN ON MY CONDO AND THAT IT IS
11 NOT MINE, THAT I PAY RENT.

12 Q. AND WITH REGARD TO THE LIS PENDENS THAT WAS FILED
13 AGAINST THE CONDOMINIUM, IS IT YOUR CONTENTION
14 THAT THAT'S INVALID IN SOME WAY?

15 A. YES.

16 Q. WHY?

17 A. BECAUSE HE -- ON HIS COPY OF THE DEED, IT DOES SAY
18 HIS NAME AS FIRST LIENHOLDER.

19 Q. DO YOU UNDERSTAND THE DIFFERENCE BETWEEN OWNING
20 SOMETHING AND HAVING A LIEN AGAINST SOMETHING?

21 A. YES, AND I HAVE A LOAN OUT WITH HIM FOR IT. I
22 HAVE A LEGAL --

23 Q. LET ME ASK YOU IF THIS IS WHAT HAPPENED. YOU
24 BOUGHT THE CONDOMINIUM IN YOUR NAME WITH MONEY
25 THAT YOUR FATHER LOANED YOU, RIGHT?

1 A. NO.

2 Q. HOW DID YOU BUY THE CONDOMINIUM INITIALLY?

3 A. I DIDN'T. MY -- I WENT TO MY DAD AND SAID, "I'D
4 RATHER LIVE IN A CONDOMINIUM THAN AN APARTMENT."
5 AND HE SAID, "OKAY, WELL, I'LL GET SOMETHING AND
6 YOU CAN JUST PAY ME BACK MONTH TO MONTH."

7 Q. WHEN THE CONDOMINIUM WAS PURCHASED -- WELL, LET'S
8 BACK UP. WHEN WAS THAT? WHEN WAS IT PURCHASED?

9 A. 2000.

10 Q. DID YOU GO TO THE CLOSING?

11 A. NO.

12 Q. DID YOU GIVE YOUR DAD POWER-OF-ATTORNEY?

13 A. HE HAS POWER-OF-ATTORNEY.

14 Q. SO YOU DID GIVE IT TO HIM AT SOME POINT?

15 A. I'M SURE I DID.

16 Q. AND DID YOU EVER SEE THE DEED AFTER THE CLOSING?

17 A. NO, I ONLY SAW IT RECENTLY.

18 Q. WHEN YOU SAW IT RECENTLY, YOUR FATHER MIGHT BE
19 LISTED AS THE HOLDER OF A FIRST MORTGAGE AGAINST
20 THAT PROPERTY, BUT IT'S THE CASE THAT YOU'RE
21 LISTED AS THE RECORD OWNER OF THE PROPERTY, RIGHT?
22 YOU CAN MARKET THE PROPERTY YOURSELF?

23 A. I DON'T -- I GUESS IT IS. I MEAN, I SAW HIM AS
24 LIENHOLDER.

25 Q. ARE THERE ANY OTHER MORTGAGES AGAINST THE PROPERTY

1 OTHER THAN THE ONE YOUR FATHER HAS AGAINST IT?

2 A. NO.

3 Q. DO YOU OWN YOUR CAR?

4 A. NO.

5 Q. WHO OWNS THE CAR?

6 A. HE DOES.

7 Q. AND IS IT OWNED FREE AND CLEAR?

8 A. WHAT DO YOU MEAN? DOES HE HAVE A LOAN ON IT?

9 Q. IS HE MAKING PAYMENTS ON IT?

10 A. NO. BUT IT'S ALSO -- IT WAS TOTALLED IN JULY OF
11 LAST YEAR, AND I HAVE A JUNKED TITLE. USAA PAID
12 ME OUT SOME MONEY AND THEY JUNKED THE CAR. BUT
13 THEY SAID, YOU KNOW, SINCE IT'S NOT DAMAGED ON THE
14 PHYSICAL SIDE, YOU CAN CONTINUE TO DRIVE THE CAR.
15 YOU JUST WON'T BE ABLE TO SELL IT. YOU'LL ONLY BE
16 ABLE TO SELL IT FOR SCRAP.

17 Q. AND HOW MUCH COMPUTER EQUIPMENT DO YOU HAVE THAT
18 BELONGS TO YOU?

19 A. LESS THAN 1,500. I MEAN --

20 Q. THE LAPTOP THAT YOU HAD IN HERE EARLIER, HOW MUCH
21 IS THAT WORTH?

22 A. ABOUT A THOUSAND.

23 Q. SO YOUR TESTIMONY IS YOU ONLY HAVE \$500 OF OTHER
24 COMPUTER EQUIPMENT?

25 A. THAT'S CORRECT.

1 Q. DO YOU HAVE COMPUTER EQUIPMENT THAT SOMEBODY ELSE
2 OWNS?

3 A. NO.

4 Q. WHAT OTHER COMPUTER EQUIPMENT DO YOU HAVE?

5 A. THAT'S -- JUST MY LAPTOP.

6 Q. AND DO YOU HAVE ANY MONITORS OR ANYTHING LIKE
7 THAT?

8 A. NO.

9 Q. YOU HAVE NO PERIPHERALS AT YOUR HOUSE?

10 A. NO.

11 Q. NO PRINTERS?

12 A. I HAVE SOME PRINTERS.

13 Q. NO DIGITAL CAMERAS?

14 A. I HAVE A DIGITAL CAMERA.

15 Q. AND WHAT ARE YOU DOING FOR INCOME NOW?

16 A. RIGHT NOW, PRETTY MUCH JUST DOING THE APPLE
17 CONSULTING AND SELLING ON EBAY. AND, I MEAN, A
18 LOT OF THAT'S FIZZLED OUT. I'M PROBABLY GOING TO
19 HAVE TO GO BACK AND LIVE WITH MY DAD.

20 Q. WHERE DO YOU GET INVENTORY TO SELL ON EBAY?

21 A. FROM, YOU KNOW, PROCUREMENT SOURCES.

22 Q. WHAT ARE THOSE?

23 A. I'M NOT DISCLOSING THAT. I WAS ADVISED THAT I
24 DON'T HAVE TO DO THAT SINCE YOU ARE A COMPETING
25 BUSINESS THAT YOU WOULD GET EBAY INVENTORY FOR. I

1 CAN'T DO THAT.

2 Q. WHO ADVISED YOU THAT?

3 A. MR. CARPENTER.

4 Q. BUT HE'S NOT REPRESENTING YOU?

5 A. NO.

6 Q. DO YOU KNOW WHY HE'S NOT REPRESENTING YOU?

7 A. HE SAID I DON'T NEED AN ATTORNEY RIGHT NOW. HE
8 SAID THIS IS SO BOGUS, THIS IS THE MOST BOGUS
9 LITIGATION HE'S EVER SEEN IN HIS WHOLE LIFE.

10 Q. AND HE'S A FRIEND OF YOUR DAD'S?

11 A. YES.

12 Q. DO YOU HAVE ANY OTHER ASSETS BESIDES THE COMPUTER
13 EQUIPMENT THAT YOU OWN?

14 A. NO, I DO NOT.

15 Q. ARE YOU PLANNING TO MOVE SOMETIME SOON?

16 A. I MAY HAVE TO MOVE BACK IN WITH MY DAD.

17 Q. WHY IS THAT?

18 A. BECAUSE ALL THIS HAS PRETTY MUCH RUINED MY WHOLE
19 LIFE.

20 Q. WHY IS THAT?

21 A. I LOST MY JOB AT THE COMPUTER CLINIC. I'VE BEEN
22 TOO DEPRESSED TO REALLY KEEP UP WITH MY APPLE
23 CUSTOMERS. I'VE BEEN TOO DEPRESSED TO REALLY
24 WRITE ON MY WEBSITE VERY MUCH. I AM PRETTY MUCH
25 OUT OF INVENTORY FOR EBAY.

1 Q. BUT YOU INDICATE OR YOU'VE ARGUED MANY TIMES THAT
2 YOU DON'T MAKE ANY MONEY ON YOUR BLOG, RIGHT?

3 A. THAT'S CORRECT, BUT I WAS PLANNING ON THAT AT THE
4 BEGINNING OF THE YEAR.

5 Q. HOW WERE YOU GOING TO MAKE MONEY ON YOUR BLOG?

6 A. DARING FIREBALL POSTED AN ANALYSIS OF WHAT HE
7 COULD DO TO STOP HIS JOB, AND HE SAID THAT HE
8 COULD MAKE ROUGHLY \$35,000 A YEAR. HE EXCEEDED
9 THAT. AND I THOUGHT THAT I MIGHT BE ABLE TO DO
10 THE SAME.

11 Q. DOING WHAT? SELLING CLICK-THROUGH ADS?

12 A. NOT SELLING CLICK-THROUGH ADS, BUT PEOPLE THAT --

13 Q. ALLOWING THEM TO BE USED ON YOUR WEBSITE?

14 A. AFFILIATED INCOME, YES.

15 Q. SO YOU HAVEN'T DONE THAT?

16 A. NO, BECAUSE I HAVEN'T WRITTEN ENOUGH ARTICLES TO
17 KEEP IT UP.

18 Q. AND YOU HAVEN'T BEEN TO ANY PHYSICIAN OR
19 PSYCHOLOGIST OR PSYCHIATRIST ABOUT DEPRESSION,
20 RIGHT? YOU'RE NOT SEEKING ANY TREATMENT FOR THAT
21 NOW?

22 A. NO, BECAUSE I'M PRETTY HEALTHY. BUT IT'S STILL
23 DEPRESSING. AND THAT DOESN'T MEAN THAT I'M NOT
24 GOING. MY FATHER IS INTERESTED IN POSSIBLY TAKING
25 ME, BUT --

1 Q. AND YOU HAVEN'T SOUGHT OTHER EMPLOYMENT?

2 A. NO.

3 MR. ELWELL:

4 I'M PROBABLY JUST ABOUT THROUGH. WHY DON'T WE

5 TAKE ABOUT FIVE MINUTES?

6 (OFF THE RECORD; BRIEF RECESS)

7 EXAMINATION RESUMED BY MR. ELWELL:

8 Q. WE'RE BACK ON THE RECORD, MR. SMITH. I JUST HAVE
9 A COUPLE OTHER QUESTIONS. I THINK YOU INDICATED
10 THAT YOUR DAD'S NAME IS JUNIOR?

11 A. JUNIUS.

12 Q. JUNIUS? J-U-N-I-U-S?

13 A. YES.

14 Q. AND WHAT'S HIS COMPLETE ADDRESS?

15 A. 814 BELL SHOALS ROAD, PICKENS, SOUTH CAROLINA,
16 29671.

17 Q. AND HAVE YOU MADE ANY MOTION TO THE COURT
18 CONCERNING OBTAINING FREE USE OF A COURT REPORTER,
19 OR FUNDS OR SOMETHING FOR A COURT REPORTER?

20 A. I HAVEN'T YET, BUT I AM.

21 Q. WHEN DO YOU PLAN TO DO THAT?

22 A. SOON. I'M NOT GOING TO BE ABLE TO MAKE THAT DATE
23 FOR THE JANUARY 5TH. I'M GOING TO HAVE TO HAVE
24 ANOTHER LATER DATE IN JANUARY.

25 Q. YOU INDICATED YOU'RE GOING OUT OF TOWN SOMEWHERE

1 IN JANUARY?

2 A. POSSIBLY. I DON'T KNOW YET.

3 Q. WHERE WOULD YOU BE GOING?

4 A. MAC WORLD EXPO IN SAN FRANCISCO.

5 Q. AND HOW ARE YOU GOING TO FUND THAT?

6 A. TWO OF MY CUSTOMERS ARE SPONSORING ME.

7 Q. WHO IS THAT?

8 A. TWO OF MY CUSTOMERS.

9 Q. WHO IS GIVING YOU THE MONEY?

10 A. AARDVARK STUDIOS AND TAMARA HERD.

11 Q. AND TAMARA HERD IS AN INDIVIDUAL?

12 A. YES.

13 Q. WHAT SORT OF LINE OF BUSINESS IS SHE IN?

14 A. GRAPHICS AND DESIGN.

15 Q. HERE IN GREENVILLE?

16 A. YES.

17 Q. AND AARDVARK STUDIOS IS WHERE?

18 A. PELHAM ROAD.

19 Q. YOU INDICATED THAT YOU MAY BE GOING UNDER

20 TREATMENT FOR DEPRESSION.

21 A. MY DAD IS LOOKING INTO THAT FOR ME.

22 Q. AND YOU HAVE STATED THAT YOU THINK THAT THIS CASE

23 IS THE REASON THAT YOU'RE DEPRESSED.

24 A. YES.

25 Q. IS IT POSSIBLE THAT MAYBE YOU'RE DEPRESSED BECAUSE

1 YOU'RE 32 AND LIVE IN A \$30,000 CONDO AND DON'T
2 MAKE MUCH MONEY, AND DRIVE A JUNK CAR, AND AREN'T
3 MARRIED, AND ANYTHING ELSE THAT MIGHT BE
4 DEPRESSING TO SOMEBODY YOUR AGE?

5 A. THANK YOU FOR WORSENING IT, BUT, NO, I DON'T.
6 IT'S BEEN THIS ISSUE SOLELY.

7 Q. AND HOW IS IT THAT YOU KNOW THAT?

8 A. BECAUSE I HAVEN'T BEEN LIKE THIS BEFORE. AND MY
9 PLAN WAS TO GO INTO A MORE -- LIKE A GREATER ROLE
10 ON THE INTERNET, AND I WASN'T ABLE TO DO THAT
11 BECAUSE OF THIS CASE.

12 Q. AND HOW MUCH DO YOU THINK YOU STOOD TO MAKE
13 INDIVIDUALLY ON THE EBAY INVENTORY IF IT SOLD FOR
14 THE PRICES THAT YOU THINK IT SHOULD HAVE SOLD FOR?

15 A. THAT I CONSIGNED TO BIDZIRK?

16 Q. RIGHT.

17 A. 26,000.

18 Q. PERSONALLY?

19 A. YEAH.

20 Q. TO BE SPLIT BETWEEN YOU AND MR. BUZZELL?

21 A. NO, THAT WAS WHAT TY SHOULD HAVE GOTTEN FOR OUR
22 INVENTORY.

23 Q. HE SHOULD HAVE GOTTEN 26,000 FOR IT?

24 A. YES. AND THEN SPLIT THAT, AT MINIMUM, 50/50, EVEN
25 THOUGH THE MAXIMUM THAT IT SAYS ON THEIR WEBSITE

1 IS 43.15.

2 Q. EVEN IF WE ASSUME THAT IT'S 50/50, THAT'S 13,000,
3 AND THEN YOU AND MR. BUZZELL WOULD DIVIDE THAT?

4 A. NO. I WOULD, IN TURN, DIVIDE THAT INTO 50/50 WITH
5 FRANK WATTS AND THEN 50/50 WITH DAVE BUZZELL.
6 THAT'S EXPLAINED IN THE ARTICLE.

7 Q. SO FROM 26, THEN YOU WOULD HAVE, AFTER YOU PAID
8 MR. SCHMIDT OR BIDZIRK, YOU'D HAVE 13. YOU'D GIVE
9 6,500 TO MR. WATTS AND THEN --

10 A. ROUGHLY 3,000 A PIECE.

11 Q. -- YOU AND MR. BUZZELL WOULD SPLIT \$6,500?

12 A. THAT'S CORRECT. BUT AT THE SAME TIME, WE ALSO
13 WERE GOING TO HAVE AN ONGOING RELATIONSHIP WITH
14 TY, HAD THINGS WORKED OUT AND HAD HE GOTTEN US THE
15 RIGHT AMOUNTS FOR THINGS. AND WE WOULD HAVE HAD
16 CONTINUING INVENTORY, BUT THE OWNER OF THE
17 INVENTORY HAD TO DROP ALL OF THAT INVENTORY
18 BECAUSE WE JUST WEREN'T ABLE TO MOVE ANY. HE HAD
19 TO GET RID OF IT BECAUSE IT WAS COSTING TOO MUCH
20 MONEY IN OVERHEAD FOR THE RENTAL OF THE PLACES.

21 Q. AND SO IT'S YOUR TESTIMONY THAT THIS \$3,250 THAT
22 YOU THOUGHT YOU WERE GOING TO REALIZE WAS A LIFE
23 CHANGING AMOUNT OF MONEY AND WOULD HAVE MADE A BIG
24 DIFFERENCE IN YOUR BUSINESS DEALINGS TODAY?

25 A. YES, BUT THERE ALSO COULD BE MORE MONEY INVOLVED

1 IN THAT.

2 Q. AND IS IT THE CASE THAT SOME OF THE INVENTORY THAT
3 YOU WERE CONSIGNING INCLUDED CRT MONITORS?

4 A. THAT'S CORRECT.

5 Q. AND WHAT DO YOU THINK THE STREET VALUE OF A CRT
6 MONITOR IS TODAY?

7 A. THEY -- IF THEY'RE VIEW SONIC OR NEC, OR SONY
8 MONITORS, THEY GET ROUGHLY \$120 TO \$150 ON EBAY.

9 Q. WHY WOULD I PAY A HUNDRED BUCKS FOR A CRT MONITOR
10 WHEN I CAN PAY NOT MUCH MORE THAN THAT FOR
11 SOMETHING FLAT SCREEN, OR BUY A SYSTEM AND GET IT
12 THROWN IN?

13 A. THE COLOR SEPARATION ON A CRT IS MUCH BETTER FOR
14 GRAPHIC DESIGNERS. YOU CAN GET BILLIONS OF COLORS
15 ON A CRT WHERE YOU CAN ONLY GET HALF OF THAT ON AN
16 LCD. LCD'S ALSO HAVE A REALLY HIGH RESPONSE TIME.
17 SO THEY'RE NOT GOOD FOR GAMING.

18 Q. SO IT'S YOUR CONTENTION THAT CRT MONITORS ARE
19 ACTUALLY SUPERIOR TO LCD MONITORS OR OTHER FLAT
20 SCREEN MONITORS?

21 A. YES. NOT ALL LCD'S. THERE ARE SOME HIGH END
22 LCD'S THAT ARE GOOD.

23 Q. AND SO WHEN IS THE MAC WORLD EXPO?

24 A. I WOULD LEAVE JANUARY 5TH AND COME BACK THE 11TH.

25 Q. WHAT WOULD BE YOUR REASON FOR GOING?

1 A. BECAUSE THEY ARE MOST LIKELY TO INTRODUCE AN APPLE
2 PHONE.

3 Q. IS YOUR PRESENCE REQUIRED FOR THAT, FOR SOME
4 REASON?

5 A. NO. I FOLLOW THAT REALLY CLOSELY, AND I HAVE --
6 I'VE SEEN THE BETA PROTOTYPE AND I WANT TO SEE
7 THEM INTRODUCE THAT.

8 Q. WHY IS THAT?

9 A. BECAUSE MY LIFE REVOLVES AROUND APPLE COMPUTER. I
10 LOVE APPLE COMPUTER AND I LOVE EVERYTHING THAT
11 THEY DO.

12 Q. HOW MUCH DOES IT COST TO GO TO THE MAC WORLD EXPO?

13 A. I GOT A HOTEL STAY AND PLANE TICKET WAITING FOR ME
14 IF I WANT TO GO, OTHERWISE TAMARA'S GOING TO GO,
15 FOR \$234. IT'S PRETTY AWESOME, A GREAT DEAL.

16 Q. AND DOES IT COST TO ENTER THE SHOW?

17 A. NO, I'VE GOT FRIENDS AT APPLE THAT WILL LET ME IN.

18 Q. AND HAVE YOU ASKED THE COURT TO GIVE YOU ANY KIND
19 OF LEAVE OF ABSENCE FROM THIS CASE WHILE YOU'RE
20 GONE DURING THAT WEEK?

21 A. NO, I HAVE NOT. BUT THEY WOULD -- THEY WERE
22 SUPPOSED TO NOTIFY ME OF ANY IMPORTANT DATES. SO
23 I'M SURE THAT THEY WILL DO THAT. I'M NOT BOUND TO
24 THIS STATE DURING THIS TRIAL.

25 MR. ELWELL:

1 I DON'T HAVE ANYTHING FURTHER.

2 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS

3 CONCLUDED AT 4:55 P.M.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
C.A. #6-06-CV-00109-HMH

BIDZIRK, LLC, DANIEL G.
SCHMIDT, III, AND JILL
PATTERSON,
Plaintiffs
vs.

PHILIP J. SMITH,
Defendant.

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CERTIFICATE OF REPORTER

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I, Karen A. Belanger, a Notary Public for the State of South Carolina, duly commissioned and qualified as such, do hereby certify that the foregoing 162 pages represent a true and accurate transcript of the foregoing deposition of PHILIP J. SMITH taken by me on the 29th day of December, 2006.

That the deponent was duly placed under oath and admonished to speak the whole truth. Oral testimony was duly taken and transcribed as to the questions propounded and the answers given.

All offered exhibits, stipulations, and objections, if any, in this cause are duly attached or included herein.

IN WITNESS WHEREOF, I have set my hand and official seal on this 5th day of January, 2007.

KAREN BELANGER, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 04/18/2013

